



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 4, 2017
- b. A request for more time to file the within application.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the One month Notice to End Tenancy was served on the Tenant by posting on April 4, 2017. The Application for Dispute Resolution filed by the Tenant acknowledges he received it on April 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on April 27, 2017.

The tenant filed an Amendment to the Application for Dispute Resolution on May 11, 2017. He testified he served it by mailing, by registered mail to where the landlord carries on business on May 11, 2017. The landlord testified she received it on May 12, 2017.

Whether the Amendment can be heard?

I determined that it was not appropriate to consider the amendment for the following reasons:

- It does not include a related claim. It alleges the landlord is harassing him by sending a number people to the suite (Insurance Adjuster on April 12, 2017, Suite Inspection on April 12, 2017, Fabric curtain cleaners on May 6, 2017 but these statements of fact are not related to the application to cancel the one month Notice to End Tenancy dated April 4, 2017.
- The Amendment was not served within the time period required by the Rules. Rule 4.6 provides that the Amendment must be received by the respondent "not less than 14 days before the hearing." The definition section provides that in calculating time

expressed as “not less than” the first and last days must be excluded. The landlord received the Amendment on May 12, 2016. The hearing was scheduled for May 25, 2017. The requirement of not less than 14 days has not been complied with.

- The tenant retains the right to file a further application with respect to the facts set out in the Amendment but he must identify what claim he is making.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an Order for more time to make this application?
- b. Whether the tenant is entitled to an order cancelling the one may Notice to End Tenancy dated April 4, 2017?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1023 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$485 on May 1, 2015. .

Application for more time to make this application:

The Application for Dispute Resolution filed by the Tenant states that on April 4, 2017 he was given the one month Notice to End Tenancy. Section 47(4) provides that the Tenant must dispute the Notice within **10 days** and if he does not do so he is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and he must vacate the rental unit by that date.

The Application for Dispute Resolution is dated April 20, 2017 but it was not accepted for filing by the Registry until April 24, 2017. The tenant failed to file the within Application within the 10 days of receiving it as required by the Act.

Section 66(1) allows an arbitrator to extend a time limit established by this Act “only in exceptional circumstances.” That section provides as follows:

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

Policy Guideline 36 includes the following:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Application for Dispute Resolution outlines the events leading up to the service of the one month Notice to End Tenancy and states: "After extensive search for clarity of stated RCMP police report, I was told on April 19, 2017 from the RCMP the report has actual no relevance to the stated 'causes for eviction.' With this timeline, I feel I have complied with written request from the landlord (TP) prior to receiving a one month notice to end tenancy. Furthermore, after receiving the notice, I had contacted the landlord agent (TP) multiple times to find a speaking resolution (within 10 days). But no calls/voice messages have been returned to this date."

The materials filed by the tenant state as the reason for the late application that he was physically attacked by his work supervisor and "this incident has slowed my response to a degree." It further states that a doctor's appointment was scheduled for May 1, 2017.

I determined the explanation of the tenant for the delay in filing an Application does not amount to exceptional circumstances. The failure of the landlord to return phone calls and the inability to obtain a police report from the RCMP is not a strong and compelling reason to delay in filing the application. Further, the tenant failed to produce sufficient evidence to prove the assault by his supervisor or that it impaired his ability to file an Application for Dispute Resolution.

I dismissed the tenant's application for more time to file the within application. On this basis alone I dismissed the Tenant's application to cancel the one month Notice to End Tenancy.

Application to Cancel the one month Notice to End Tenancy on the merits:

As I heard evidence relating to the Tenant's application. I determined that it was appropriate to consider the Tenant's application to cancel the Notice to End Tenancy on its merits.

Grounds for Termination:

The Notice to End Tenancy dated April 4, 2017 relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 -
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
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- Tenant has engaged in illegal activity that has, or is likely to:
 - ...
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord produced the following evidence:

- Evidence from upstairs tenant including photos and e-mail of the tenant harassing and threatening the upstairs tenant.
- The upstairs tenant suffers from a heart condition and expressed concern for his personal safety and he indicated that he intends to leave if this matter is not resolved.
- Oral testimony from the caretaker that on occasion he would knock on the door but the tenant refused to answer even though he was in the rental unit. He also expressed concern for safety because of the unusual behavior of the tenant.
- The tenant failed to pay the rent for May.
- The landlord wrote a letter asking the tenant to stay away from the upstairs tenant.

The tenant disputes much of this evidence. He acknowledges going up to see the upstairs tenant at the end of March. However, he did not attempt to contact the upstairs tenant after he received the landlord's notice. He testified the allegations made are opinion and not facts. The RCMP report is unrelated and not relevant.

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient cause on a balance of probabilities to end the tenancy on the merits. I find that the evidence of the upstairs tenant is credible and consistent with the surrounding circumstances. The photos and explanation are sufficient to establish sufficient cause. I do not accept the testimony of the tenant. I find that his conduct has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Determination and Orders:

As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy dated April 4, 2017 and setting the end of tenancy for May 5, 2017. However, the Notice to End Tenancy failed to correctly set the end of tenancy date as the tenant must be given a clear month notice to be effective at the end of the ensuing rental payment period. The Act self-corrects an improperly dated notice. I ordered that the tenancy shall end on May 31, 2017. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective May 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: May 25, 2017

Residential Tenancy Branch