



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, O

Introduction and Preliminary Matter

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed April 20, 2017 wherein the Tenant sought more time pursuant to section 66(1) of the *Residential Tenancy Act* as well as other unspecified relief.

In the "Details of Dispute" section the Tenant writes that he is disputing an "eviction based on late payment of rent". The Landlord provided a copy of a 2 Month Notice to End Tenancy for Cause issued on March 15, 2017 (the "Notice") in which the Landlord indicates the reasons for ending the tenancy as repeated late payment of rent, and further specifies the Tenant has been late paying rent since the tenancy began October 1, 2016.

In consideration of the above, I find that the Tenant intended to dispute the Notice, therefore seeking an order pursuant to section 47(4) of the *Act*. I also find it likely the Landlord would have been aware the Tenant intended to dispute the Notice. Pursuant to section 64(3)(c) of the *Act*, I amend the Tenant's Application to include a request for an Order canceling the Notice pursuant to section 47(4).

The hearing was conducted by teleconference on May 31, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or

arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Tenant be granted more time to dispute the Notice?
2. Should the Notice be cancelled?

Background and Evidence

The Landlord issued the Notice pursuant to section 47 of the *Act*. Section 47(4) and (5) provide as follows:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The Tenant testified that he received the Notice “some time” in March. He stated that he received both pages of the Notice, although he did not read the Notice. He claimed that he was unaware that he had only ten days in which to dispute the Notice.

Even if the Tenant received the Notice on the last day in March (which neither party claimed) he would have had until April 10, 2017 to apply to dispute the Notice.

The Tenant applied for dispute resolution on April 20, 2017 which is outside the time to apply as provided above.

The Tenant also stated that he asked for a letter from his employer to confirm the late payment of his pay, which he claimed was the reason he was repeatedly late paying his rent. This letter was filed on April 26, 2017.

The Tenant confirmed he received both pages of the Notice. On the first page of the Notice, the Tenant is clearly informed he must respond to the Notice as follows:

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE

The second page of the Notice provides the following additional information:

INFORMATION FOR TENANTS

You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

Analysis

Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

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*].

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

In all the circumstances, I find the Tenant has submitted insufficient evidence to support a finding that he should be granted more time pursuant to section 66(1) of the *Act*. Failure to read the Notice is not an exceptional circumstance as contemplated by section 66(11).

As his request for more time has been denied, his application to cancel the Notice is similarly dismissed. In failing to apply on time, the Tenant is conclusively presumed

under section 47(4) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

The Tenant did not apply to dispute the Notice within the time required in section 47 of the *Act*, and his application for more time pursuant to section 66(1) is denied.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. The Landlord must serve the Order of Possession on the Tenant and may file and enforce the Order in the B.C. Supreme Court as an order of that Court.

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 31, 2017

Residential Tenancy Branch