Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNL, CNQ, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on March 29, 2017 to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rent Unit (the "Notice"), and for more time to cancel the Notice.

An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application by registered mail and the parties confirmed the only documentary evidence submitted prior to this hearing was a copy of the Notice provided by the Tenant. The hearing process was explained to the parties and they had no questions about the proceedings and how they would be conducted.

Preliminary Issues and Analysis

At the start of the hearing, the parties confirmed that the Notice dated March 2, 2017 was served to the Tenant by putting it in the Tenant's mail box on March 6, 2017. The Notice details a vacancy date of May 31, 2017. I determined the Notice was issued on the approved form and that the contents complied with Section 52 of the Act.

The Tenant confirmed receipt of the Notice on March 6, 2017 from her mail box. Therefore, pursuant to Section 49.1 (5) of the *Residential Tenancy Act* (the "Act"), the Tenant had 15 days from this date onwards to file the Application to dispute the Notice. However, the Tenant did not file the Application until March 29, 2017, this date being outside of the 15 day time limit provided by the Act.

The Tenant applied for more time to cancel the Notice on the Application. Section 66(1) of the Act allows an Arbitrator to extend a time limit established by the Act only in exceptional circumstances.

The Tenant was asked about the reason why she had applied outside of the 15 day time limit to dispute the Notice. The Tenant acknowledged that she had 15 days to dispute the Notice but testified that she was trying to get an advocate to help her to present her case for disputing the Notice. However, the advocate she spoke to refused to assist her with the case citing that fact that he was unable to work with the Tenant. The Tenant also confirmed that she had filed the Application by herself.

The Landlord's agent stated that she was seeking to end the tenancy because the Tenant had already been given an opportunity to move out of the rental unit voluntarily and now she has failed to dispute the Notice within the required time limit.

Based on the foregoing, I find the Tenant failed to provide sufficient evidence for me to determine that exceptional circumstances existed which prevented the Tenant from making the Application within the time limits set by the Act.

I find the Tenant could still have filed the Application within the 15 day time limit and sought advocacy after that point. The Tenant failed to provide supporting documents or corroborating evidence of communication and efforts she had made to get an advocate and I am not satisfied that the Tenant's inability to actually file the Application, which she eventually did on her own, prevented her from filing it on time.

Section 49.1(6) of the Act provides that if a tenant fails to dispute a Notice within the time limits, then the tenant is conclusively presumed to have accepted the vacancy date on the Notice and must vacate the rental unit by this date.

As the Tenant has failed to convince me that she should be given more time to cancel the Notice, I dismiss the Tenant's Application and I find the Tenant is conclusively presumed to have accepted the vacancy date on the Notice. Accordingly, pursuant to Section 55(1) of the Act, the Landlord must be issued with an Order of Possession to end the tenancy. However, the Landlord was willing to give the Tenant more time to vacate the rental unit.

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties discussed the issues between them, turned their minds to compromise, and decided to mutually agree to end the tenancy. The Landlord withdrew the Notice and the parties agreed that this tenancy would end at 1:00 p.m. on June 30, 2017.

The Landlord is issued with an Order of Possession effective for this date and time. This order may be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit on or before this date.

In addition, the Landlord agreed to provide the Tenant with up to $300.00 for helping her with moving costs to move out of the rental unit. However, this agreement is not linked or contingent upon the Tenant's requirement to move out of the rental unit on June 30, 2017.

The Tenant is still required to pay rent for the duration of the tenancy and the provisions of the Act with respect to the return and retention of the security deposit still apply.

The parties may negotiate further agreements between them outside of the dispute resolution process, but these should be recorded in writing. However, there is no legal requirement or obligation for the parties to agree on anything than what has been recorded in this Decision, unless the parties have recourse and remedy under the Act.

Conclusion

The parties withdrew the Notice dated March 2, 2017. The parties mutually agreed to end the tenancy on June 30, 2017 at 1:00 p.m. The Landlord is issued with an Order of Possession effective for this date and time. The Landlord agreed to provide the Tenant with monetary compensation for moving costs up to $300.00. The Tenant's Application is dismissed without leave to re-apply.

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

Dated: May 03, 2017

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Residential Tenancy Branch