



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNCAN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy issued for Cause on April 11, 2017 (the "Notice").

The hearing was conducted by teleconference on June 1, 2017. Both parties called into the hearing and were given an 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.

Preliminary Matter

The Landlord's representative, G.J., testified that the Notice was personally served on the Tenant on April 11, 2017 in the afternoon. G.H., who is the maintenance supervisor witnessed service on the Tenant.

The Tenant confirmed that he was served the Notice to End Tenancy on April 11, 2017.

The Tenant failed to request more time to dispute the Notice on his Application for Dispute Resolution.

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.

[emphasis added in italics]

Pursuant to the above, the Tenant had until April 20, 2017 to apply for Dispute Resolution.

Calculation of time or age

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

(5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

(6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.

(7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.

(8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

[Emphasis added in italics]

Section 47(4) mandates that a Tenant receiving a 1 Month Notice to End Tenancy must apply for dispute resolution *within 10 days* after the date the tenant receives the notice.

Consequently, and pursuant to section 25(5) of the *Interpretation Act* the Tenant had until April 21, 2017 to apply for Dispute Resolution.

The Tenant applied for dispute resolution on April 25, 2017 which is outside the time to apply as provided above.

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 WHO RECEIVE THIS NOTICE TO END TENANCY

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.

As the Tenant applied outside the strict timeline mandated in section 47, his application to cancel the Notice is dismissed.

Conclusion

The Tenant did not apply to dispute the Notice within the time required in section 47 of the *Act*. 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.

Pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession. The Landlord's representative agreed that the Order could be effective June 30, 2017 to allow the Tenant some time to find alternate accommodation. Accordingly, I grant the Landlord an Order of Possession effective **June 30, 2017**. 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: June 01, 2017

Residential Tenancy Branch