



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant applied to cancel a 1 Month Notice to End Tenancy for Cause issued on March 27, 2017 (the "Notice") as well as more time pursuant to section 66(1) of the *Residential Tenancy Act* in which to make the application.

The hearing was conducted by teleconference on May 17, 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.

Preliminary Matter—Naming of the Landlord on the Application

The Tenant erroneously named the executive director as the Landlord on her Application for Dispute Resolution. The residential tenancy agreement and Notice confirm the name of the corporate landlord. Pursuant to section 64(3)(c) I amend the Tenant's Application to correctly name the Landlord.

Issues to Be Decided

1. Should the Tenant be granted more time to make her application for dispute resolution?
2. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to dispute a notice to end a tenancy, the Landlord presents their evidence first as the Landlord bears the burden of proving the reasons cited on the Notice.

In this case, the Tenant also applied for more time pursuant to section 66(1) of the *Act* as she applied outside the time required by the *Act*. By filing late, and without an extension of time, the Tenant would be conclusively presumed to accept the end of the tenancy pursuant to section 47 and her tenancy would end. Accordingly, she presented her evidence in support of her application for more time first, as without more time her application would fail.

The Landlord issued the Notice pursuant to section 47 of the *Residential Tenancy 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 Notice informed the Tenant that she had 10 days from the date of service in which to file an application for dispute resolution.

The parties agreed the Tenant was served the Notice on March 28, 2017 (the Landlord indicated as such on the Notice and the Tenant confirmed this information on the second page of her Application for Dispute Resolution). As such, the Tenant had until April 7, 2017 in which to make her application.

The Tenant applied for dispute resolution on April 10, 2017.

In support of her application for more time, the Tenant stated that she had to go to the dentist on an emergency basis as she broke a tooth. She was not able to state when she broke her tooth although she stated she went to the dentist three times during that period; namely: March 29, April 5 and April 12.

The Tenant also stated that she has mental health issues as well as a skin disorder. She submitted that people with physical and mental health issues should be granted more time than that which is provided by the *Act*.

The Tenant then stated that she believed the weekend days were excluded.

The Tenant confirmed she received both pages of the Notice. On the first page of the Notice, the Tenant is clearly informed she 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 I had not made my Decision as to whether to grant the Tenant more time pursuant to section 66(1), I received evidence from the parties as to the reasons set out in the Notice.

The reasons cited on the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

J.W. testified on behalf of the Landlord and provided background information relating to the tenancy. She stated that the tenancy began August 1, 2016. A copy of the tenancy agreement signed August 2, 2016 was also provided in evidence.

J.W. stated that the rental unit is on the second floor of a three story building which provides housing for women fleeing domestic violence. She confirmed that the housing is supported housing, not transitional or emergency as while the women typically live in the rental unit until they find other housing, there is no expectation that they will move out at any specified period of time.

Also provided in evidence was a copy of written Rules which were included with the tenancy agreement; the Rules include the following:

1. No male guests allowed on the H. floor.
2. No overnight guests permitted.
3. No pets allowed.
4. No violence of any form, harassment or bullying will be tolerated.
5. Smoking in designated area or designated units only.
6. No use of alcohol or drugs in common areas.
7. The confidentiality of both residents and staff must be maintained at all times.

The Tenant signed this document on August 2, 2016 confirming she had read and understood the rules and that disregard for the rules may result in discharge.

J.W. testified that beginning on the very first day of the tenancy, there were notes kept by the Landlord's staff about the Tenant disturbing others in the common areas.

J.W. further testified that the Tenant has been in conflict with others, as well as with staff of the Landlord since she moved into the rental unit. She described an incident the day after the Tenant moved in, on August 3, 2016, where the Tenant was screaming and stated that she hoped a staff member would be raped. A copy of the Incident Report relating to this incident was provided in evidence.

A further Incident Report relating to an incident on August 7, 2016 was also provided in evidence and which describes the Tenant as being intoxicated and yelling at police officers who attended the residence.

Introduced in evidence was a warning letter dated October 13, 2016 in which the Landlord's staff write:

The problematic behaviors are as follows: aggressive behaviour and lack of respect towards other residents, unwillingness to resolve conflict which impacts other residents' sense of safety, and disrupts the quiet enjoyment of others at their place of residence.

In this letter the Tenant is warned that should these behaviours continue, her tenancy will be ended.

J.W. stated that another warning letter was sent to the Tenant following which the Landlord issued a 1 Month Notice to End Tenancy.

Also introduced in evidence was a letter dated December 6, 2016 wherein the Tenant's problematic behaviour is described as follows:

1. intoxication in the common areas;
2. verbally aggressive behavior towards staff and other residents; and,
3. the disruption of the quiet enjoyment of other as their place of residence.

J.W. confirmed that notice was rescinded because the Tenant agreed to go to counseling. As a term of continuing her tenancy, the Tenant signed a "Behaviour Contract" the terms of which are set out in the December 6, 2016 letter.

J.W. stated that despite this agreement, the problems with the Tenant continued. She reported that on February 22, 2017 the Tenant was intoxicated in the common area, and screaming. The Landlord provided copies of Incident Reports written by three separate staff members relating to this incident. J.W. stated that the police were called because the staff were feeling threatened and their attempts to redirect the Tenant were not followed.

J.W. stated that another incident occurred on March 18, 2017 wherein the Tenant called the front desk and stated that she wanted to "f**king kill J". J.W. confirmed that J. is one of the staff members. J.W. stated that the Tenant's comment was heard by more than one person.

J.W. stated that after the March 18, 2017 threat to J., they held a staff meeting wherein it was determined that the rest of the occupants did not feel comfortable with the Tenant, and the staff were concerned with her behaviour.

Also introduced in evidence was a copy of a letter from other residents of the building, B.K., S. and T.L., who write about their concerns with the Tenant's confrontational and verbally abusive behaviour.

In response to the Landlord's submissions the Tenant stated: "if the authorities can lie, who can I go to for respect, and protection?" The Tenant then stated that the Landlord's concerns were "petty insults".

The Tenant admitted that she gets "mouthy when she gets scared and angry" and admitted that she said she wanted to kill J. She said that J. has been "picking on her" and that J. has been nicer now she threatened her.

The Tenant stated that she is taking a class on healthy boundaries and respectful behaviour which have been problems for her in the past. The Tenant then stated that she needs a little time to sort out the way she deals with other people.

The Tenant stated that all she wants is mutual respect. She further stated that she feels that she is being picked on because she dresses nicely and is attractive. She also stated that the other occupants are racist.

The Tenant also stated that she apologized and that she won't behave that way again.

The Tenant's advocate, D.C., also testified. He raised the following points:

1. J.S. was the one that signed the Notice.
2. J. was the one who was allegedly threatened, but she was not at the hearing to discuss how the threat affected her.
3. The Tenant threatened the Landlord's staff, not the Landlord or other occupants.
4. The November Notice was rescinded and therefore should not be brought forward in this present case.
5. There is only one incident that is mentioned and that happened on March 18, 2017 and the only one that should be considered.
6. The Tenant's threat was "off the cuff" and there was no meaning to it. The Landlord refused to accept any communication from the Tenant in this regard and refused to cooperate with the Tenant.
7. The extreme lack of housing puts the Tenant in a very difficult position.

8. The threat was a “trivial matter” and the words were said in anger and were not enough for an eviction.
9. The staff are human and prone to their prejudice and “bad ways” and they may be prone to stand up for the people they work with.
10. The staff may have provoked the Tenant and it may be the staff’s fault that they provoked her.

Analysis

As previously noted, the Tenant applied for Dispute Resolution outside the required ten days.

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.

In this case, the Tenant failed to provide any proof to substantiate her claim that she was unable to file her application in time. Even if her testimony regarding her visits to the dentist were accepted, they do not explain why she did not attend to filing her application on the other days available to her.

In all the circumstances, I find the Tenant has submitted insufficient evidence to support a finding that she should be granted more time pursuant to section 66(1) of the *Act*. As her request for more time has been denied, her application to cancel the Notice is similarly dismissed.

I wish to point out that even had I granted the Tenant more time, I find that the Landlord has met the burden of proving the reasons set out in the Notice.

I accept the Landlord’s evidence that the Tenant made a serious threat to one of the Landlord’s staff. I do not accept the Tenant’s evidence that this was an “off the cuff remark” or insignificant. Threats of bodily harm cannot be tolerated in a residential

tenancy, particularly one, such as this, where the residents are there because they have fled domestic violence.

Although the Tenant claimed she was sorry for the threat made, I am not convinced she appreciates the severity of her words and the impact on others. As noted in the Decision, the Tenant stated that she believed that J. was nicer to her after she made the threat. This comment suggests the Tenant believes this to be an effective means to control the behaviour of others.

The Tenant's advocate suggested that the only incident to which I should draw my attention is the threat made on March 18, 2017. I disagree. I find that the Tenant has engaged in a pattern of escalating problematic behaviour which significantly jeopardizes the safety of the other residents and the Landlord's staff. The Incident Reports and warning letters introduced in evidence detail the Tenant's disruptive behaviour and I find that the risk to others, posed by her continued tenancy, is not reasonable.

Additionally, I find that the Tenant has received adequate warning that her behaviour was unacceptable, and may lead to an eviction. It is notable the Tenant was issued a prior 1 Month Notice to End Tenancy, given a chance to improve her behaviour, yet failed to do so.

Therefore, I dismiss the Tenant's application to cancel the Notice. The tenancy will end in accordance with the Notice. The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

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

The Landlord has also proven the reasons cited in the Notice, such that even in the event I had granted the Tenant's request for more time, I would have dismissed her claim for an Order canceling the Notice.

The Landlord is granted an Order of Possession effective two (2) days after service.

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 17, 2017

Residential Tenancy Branch