



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, MT, OLC

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") made on May 16, 2017 to cancel a One Month Notice to End Tenancy for Cause (the "Notice") dated April 15, 2017, and for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant also applied for more time to dispute the Notice.

Two agents for the Landlord, the Tenant, and an advocate for the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained and no questions on how the proceedings would be conducted were asked.

Preliminary Issues and Findings

The female Landlord's agent confirmed receipt of the Tenant's Application by personal service. The Tenant confirmed receipt of the Landlord's 93 pages of evidence prior to this hearing which had been served to the Tenant by registered mail and email.

The female Landlord's agent denied receipt of the Tenant's four pages of documentary evidence. The Tenant confirmed that she had not provided a copy of this evidence to the Landlord but that the contents of her evidence were duplicated in the Landlord's evidence. Therefore, I allowed the Tenant's evidence.

At the start of the hearing, the Tenant confirmed receipt of the Notice by registered mail on April 27, 2017. I determined that the Notice was completed on the approved form with the correct contents as required by Section 52 of the Act. As the Tenant had not made her Application to dispute the Notice within the 10 day time limit provided for by Section 47(4) of the Act, I first turned my mind to the Tenant's request for more time to dispute the Notice.

The Tenant testified that she did not make the Application to dispute the Notice because she was under a lot of stress and has post-traumatic stress which has been ongoing for ten years. The Tenant's advocate explained that the Tenant was also dealing with a disability and is in a wheelchair. The Tenant testified that she had medical evidence to support this but confirmed that she had not provided this prior to the hearing.

The female Landlord's agent stated that the Tenant had been verbally informed twice during the 10 day dispute period that she had a right to dispute the Notice and that this should be done immediately because the time limits were sensitive. The female Landlord's agent explained that as the Tenant had not disputed the Notice within the ten day time limit, they assumed the Tenant was moving out. The Tenant acknowledged that she had been warned twice by the Landlord that the time limits to dispute the Notice were time sensitive.

Section 66 of the Act allows an Arbitrator to extend the time limit imposed by the Act only in exceptional circumstances. Based on the evidence before me, I am unable to grant the Tenant's request for more time to dispute the Notice. This is because the Tenant failed to disclose sufficient corroboration that the medical conditions she exhibited preventing her from making the Application on time. I find the Tenant had a known pre-existing condition and disability that would have required her to seek immediate assistance to help file the Application. The Tenant filed her Application on line and therefore, I am unable to conclude that her disability affected her ability to file the Application. The Tenant failed to disclose exceptional circumstances.

Section 47(5) of the Act provides that if a tenant fails to make an Application to dispute a Notice, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective vacancy date of the Notice.

However, Section 63 of the Act allows an Arbitrator to 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.

As a result, I offered the parties an opportunity to resolve this matter by way of mutual agreement. The parties discussed a number of resolution options and were allowed to have private discussions and consultations with each other before deciding whether a mutual agreement was the best form of resolution in this dispute.

After a lengthy discussion, the parties agreed that the only matter that they could mutually decide on between themselves was the ending of the tenancy. The parties

agreed that the vacancy date on the Notice would be extended to August 31, 2017 at 1:00 p.m.

The parties agreed that the Landlord would be issued with an Order of Possession effective for this date and time and that the Tenant would use the interim time to find alternative accommodation. No conditions were set on the Tenant for the remaining time of this tenancy but both parties still retain their rights, obligations, and remedies under the Act in this continuing tenancy until it ends on August 31, 2017, or with the mutual written agreement of the parties before or after this date. The Tenant is to pay rent for the remaining duration of the tenancy.

The parties confirmed that the agreement to end the tenancy was made voluntarily and that they understood that agreement is final and legally binding.

Conclusion

The Tenant's Application for more time to cancel the Notice is dismissed. Therefore, the tenancy must now end and the Tenant's Application is dismissed without leave to re-apply. The parties agreed to mutually end the tenancy on August 31, 2017 at 1:00 p.m.

The Landlord is issued with an Order of Possession which must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. Copies of this Order are attached to the Landlord's copy of this Decision and the Tenant may be held liable for any enforcement costs incurred by the Landlord.

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: June 23, 2017

Residential Tenancy Branch