



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR CNC OLC MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66,
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord's agent, RC ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

At the beginning of the hearing I had confirmed with both parties the applications before me. The landlord indicated at the beginning of the hearing that they were no longer intending to pursue the 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on June 23, 2016. At the landlord's request, this Notice is hereby withdrawn.

The tenant confirmed receipt of the 1 Month Notice to End Tenancy for Cause ('1 Month Notice') on June 9, 2017. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue—Tenant's Application for an Extension of Time to File his Application for Dispute Resolution

The tenant filed his application for dispute on June 29, 2017, although the 1 Month Notice was received by him on June 9, 2017. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenant on June 9, 2017, and he had filed for dispute resolution on June 29, 2017, twenty days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant, in the hearing, testified that he did not file an Application within 10 days due to his health issues, which left him weak and stressed out. The tenant did not testify as to what specific health issues he had, and how these health issues had prevented him from making his application on time.

RTB Policy Guideline #36 clarifies the meaning of "exceptional circumstances" as "*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered 'exceptional' circumstances include...the party did not know the applicable law or procedure*".

exceptional reason for the late filing of her application.

Although I accept the tenant's testimony that he suffers from health issues, I find that he did not provide any exceptional or compelling reasons for why he did not, or could not, file his application within 10 days of receiving the 1 Month Notice. Accordingly, I find the tenant's reason for his late application does not meet the definition of "exceptional" as per RTB Guideline #36, and under these circumstances, I am not allowing the tenant's application for more time to make his application.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary compensation for money owed under the Act, regulation, or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on June 17, 2016, with monthly rent currently set at \$375.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$250.00. The tenant currently still resides in the unit. The landlord is a non-profit society that assists its tenants with subsidized housing to support tenants with rehabilitation into to community.

The landlord served the notice to end tenancy providing the following grounds:

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The landlord testified that the tenant has received multiple warnings for engaging in behaviour contrary to its policies as noted in the tenancy agreement addendum for crime free housing. The landlord testified that the tenant has engaged in inappropriate behaviour towards female staff, and has received verbal and written warnings. The landlord testified that the tenant continued to engage in inappropriate behaviour after receiving these warnings, and was consequently barred from the use of areas such as the amenity room. The landlord included in their evidence a copy of the tenancy agreement, as well as the letters and warnings given to the tenant regarding his behaviour.

The tenant disputes the allegations of the landlord, stating that he had no criminal record, and that this matter was previously before an Arbitrator. In a hearing held on July 6, 2017, the Arbitrator cancelled a 1 Month Notice dated April 27, 2017.

The Arbitrator did make reference to the 1 Month Notice dated June 9, 2017, and noted the following in her decision:

“The landlord issued the second notice to end the tenancy in June, 2017 and filed an Amended Application for Dispute Resolution to be heard today. However, the tenant has disputed that notice and a hearing has been scheduled for September 8, 2017. The tenant did not consent to the hearing of that dispute being held today.

The tenant has disputed the One Month Notice to End Tenancy for Cause issued in June, 2017, and the parties have a hearing, and I defer any findings or decisions to the Arbitrator hearing that dispute. I have made no findings of fact or law with respect to the merits of that matter.”

The tenant also made a monetary claim in the amount of \$5,000.00 for the services that have been denied to him in the last 4 to 6 weeks, which were previously offered to him. All parties agreed that these services, such as meal service and access to case planning, were not

included in the rent, but additional services the landlord provided to assist tenants, and build community. The tenant also applied for these services to be restored to him.

The tenant testified that the \$5,000.00 claim was an estimate of what he “considered to be reasonable”, as he now had to obtain his own food. The tenant agreed that the meal service was not an obligation of the landlord’s, but caused him much financial hardship and stress as he was previously given access to this service by the landlord. The landlord testified in the hearing that the tenant was refused access to the kitchen due to his inappropriate behaviour towards staff.

Analysis

The tenant testified in the hearing that the 1 Month Notice dated June 9, 2016 was already before an Arbitrator, and was no longer in effect. As stated above, the Arbitrator noted that this matter was already scheduled for today’s hearing, and made no findings of fact or law with respects to the merits of this 1 Month Notice. The Arbitrator deferred any findings or decisions to the Arbitrator hearing the dispute. Accordingly, I find the Month Notice to still be in effect, and I make the following findings based on the testimony of both parties, and evidence before me.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on June 29, 2017. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, July 31, 2017.

In this case, this required the tenant and anyone on the premises to vacate the premises by July 31, 2017. As this has not occurred and that date has passed without a surrender of the rental unit to the landlord, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The tenant submitted a monetary claim for \$5,000.00 for the services that were previously provided to him during his tenancy, but was then denied to him. Both parties acknowledged in the hearing that the services provided were provided on a voluntary basis by the landlord, and were not included in the monthly rent. I have considered the testimony and evidence submitted by both parties, and I find that the tenant did not provide sufficient evidence to support that the landlord had failed in their obligations to the tenant in accordance with the *Act*, regulation, or tenancy agreement. Accordingly the tenant's monetary application, and application for the landlord to comply with the *Act*, regulation, or tenancy agreement are dismissed.

Conclusion

I dismiss the tenant's entire application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of July 31, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Dated: September 12, 2017

Residential Tenancy Branch