



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: CNR CNC

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant agreed they received the 10 Day Notice to end Tenancy dated October 3, 2017 to be effective October 13, 2017 posted on the door and also a One Month Notice to End Tenancy for cause dated October 3, 2017 to be effective November 3, 2017 at the same time. The tenant filed her Amendment to her Application for Dispute Resolution to dispute the 10 Day Notice on October 13, 2017. I find that the documents were legally served according to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel the Notices to End Tenancy for unpaid rent and for cause;
- b) To extend the time for filing her application;
- c) To suspend or set limits on the landlord's entry of her suite.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began in March 2012. Rent is subsidized and varies. Currently the tenant pays \$140 a month in rent and her occupant friend pays \$320 towards the rent. The landlord's testified that the tenant has been consistently in arrears; she has had many payment plans and has a current rent arrears balance of \$2874. The tenant said the landlord's accounting was at fault but agreed she had not paid rent for October 2017 in the amount of \$140. The Notice to End Tenancy dated October 3, 2017 noted rent of \$140 was in arrears. The tenant also said she worked for the landlord and signed over her pay cheque many months. She had not been paid for October but had worked in doing duties such as cleaning up the garbage.

The building manager said they had explained to the tenant numerous times that payment of rent was her responsibility and they got no rent for October. They included in evidence a letter informing the tenant of this. In evidence are also various payment plans through the years and some rental ledgers. The tenant says she does not agree with their totals and has only been given 10 receipts over the years. The landlord also pointed out that the male listed on the tenant's application is an occupant, not a tenant, according to the lease.

The landlord also objected that the tenant had filed her application late and said they were entitled to an Order of Possession pursuant to section 46 of the Act. The tenant's advocate read a letter from the tenant's doctor that was written yesterday and stated she was in hospital on October 12 and 13 and had medical and psychological issues due to a traumatic attack some months ago. The landlord said the tenant was not in hospital during the relevant time and she left everything till the last minute, even getting the letter from a doctor.

The tenant's advocate submitted that the Notice to End Tenancy for cause was invalid as the second page had not been completed listing any causes. The landlord said the letter accompanying the Notice listed the various causes.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant either pays the rent or disputes it within 5 days. I find the tenant did neither. I find she disputed it 10 days later or 7 days after the deemed receipt. Section 66 of the Act sets out criteria for extending the time limit established by the Act in exceptional circumstances. Section 66(3) provides an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice. I find the effective date on the Notice to End Tenancy was October 13, 2017 and the tenant filed her Application on October 13, 2017 so I find I have jurisdiction to consider the request. The issue is whether her reason for filing late constitutes exceptional circumstances.

Policy Guideline 36 clarifies exceptional circumstances as follows:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word

"exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well*
- the party did not know the applicable law or procedure*
- the party was not paying attention to the correct procedure*
- the party changed his or her mind about filing an application for arbitration*
- the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

I find the tenant's reasons do not qualify as exceptional circumstances. Although she was in hospital, it was not at the relevant time and in any case, I find her condition did not prevent her contacting another person on her behalf. As her application was filed beyond the 5 day limit set out in section 46 of the Act, I dismiss her application.

In respect to rent she owed, I find also that she owed \$140 on October 3, 2017 and never paid it. Although there was much dispute about the landlord's records, I find sufficient proof that the tenant owed the amount set out in the October 3, 2017 Notice to End Tenancy. She admitted this in the hearing which supports the landlord's credibility on this amount of rent. As I advised the landlord in the hearing, they will need to get their accounts in order if they seek a monetary order against the tenant.

Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective two days from service. This will effectively end the female tenant's tenancy and provide all occupants must also vacate the premises.

In respect to the tenant's request to limit the entry of the landlord, I find it is moot at this point. However, I point out to the landlord that they must follow the provisions of section 29 of the Act for legal entry into a tenant's unit.

Regarding the Notice to End Tenancy for cause, I find it is invalid as it was incomplete. Although the landlord said they attached a letter explaining the reasons for ending the tenancy, I find section 52(d) of the Act requires the landlord to state the grounds for ending the tenancy on the approved form. However, as noted above, the Order of Possession will include requirement of vacancy by the male occupant of the tenant's unit also. I find the male is not a tenant according to the lease in evidence.

Conclusion:

I dismiss the tenant's application; no filing fee was involved.

I grant the landlord an Order for Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement

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: November 22, 2017

Residential Tenancy Branch