



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT MT OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on January 9, 2017. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- cancellation of the landlord's two month notice to end tenancy (the Notice) pursuant to section 49;
- more time to make an application to cancel the Notice;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and,
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The Landlords and the Tenant (and Agent) attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in this application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- more time to make an application to cancel the Notice; and,
- cancellation of the Landlord's Notice, pursuant to section 49.

Issues to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenant has applied for more time to make an application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenant's Agent stated that the Tenant received the Two Month Notice on October 4, 2017. The Tenant also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

- The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 49 of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. As the Tenant received the Notice on October 4, 2017, he had until October 19, 2017, to dispute the Notice.

After reviewing the file before me, I note that there was missing information in the Tenant's application at the time it was initially filed. More specifically, the fee waiver was not properly completed until October 20, 2017, which resulted in the application being made late.

I turn to the following Rules of Procedure:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid **or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office**. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

[My emphasis added]

I find the Tenant's application was not made until October 20, 2017, the time at which it was properly completed and submitted. In this case, the Tenant did not apply within the allowable 15 day window, which lapsed on October 19, 2017.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

The Tenant's Agent stated that she was working with ServiceBC to get the application completed within the allowable time frame. However, I find there is insufficient evidence that any of the Tenant's circumstances are exceptional, such that it warrants extra time to file an application.

As a result, I find that the Tenant is not entitled to more time to make an Application to cancel the Notice and his late Application is therefore dismissed in its entirety.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on January 31, 2018.

Conclusion

The Tenant's request for more time to make an application to cancel the Notice is dismissed. Further, the Tenant's application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **January 31, 2018, at 1pm**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced 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: January 09, 2018

Residential Tenancy Branch