



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, FFT, MT
FFL, OPQ

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking more time to make an application to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Two Month Notice”), cancellation of the Two Month Notice, and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address. At the request of the Agents, copies of the decision and any order issued in

favor of the Landlord will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

Evidence

Although the Agents testified that the evidence before me from the Landlord was sent to the Tenant by registered mail on January 9, 2018, the Tenant testified that they did not receive this evidence.

The Agents testified that they sent the evidence by registered mail in accordance with the *Act* and that the deemed service provisions should apply regardless of whether the Tenant physically collected the mail. The Agents stated that the mail provider website indicates that notices of attempted delivery were left for the Tenant in their mailbox on January 10 and January 17, 2018, and that when the Tenant failed to pick up the registered mail, it was subsequently returned to the Agents on January 29, 2018.

The Tenant testified that he only recently checked his mailbox as he was incapacitated due to illness. The Tenant acknowledged that there was registered mail delivery notices in his mailbox but stated that he only became aware of them recently and that in any event, he would not have been able to pick them up due to his illness and the fact that he is often bedridden.

Section 90 of the *Act* states that a document given or served by mail is deemed to be received on the fifth day after it is mailed, unless there is evidence that it was earlier received. Although the Tenant stated that they were unable to check their mail due to illness, there is no documentary evidence before me to corroborate this statement. As a result, I find that section 90 of the *Act* applies and the Landlord's evidence is therefore deemed to have been served on the Tenant on January 14, 2017, five days after it was sent by registered mail.

As this date complies with the service provisions in the Rules of Procedure for both applicants and respondents, I accept the Landlord's evidence for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an Application seeking to cancel the Two Month Notice?

If so, is the Tenant entitled to an order cancelling the Two Month Notice under the *Act*?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the Tenant's rental unit is located in a subsidized housing complex where the amount of the Tenant's rent contribution is based on income level. The tenancy agreement indicates that the month-to-month tenancy began on April 1, 2007, and that the Tenant's rent contribution at the start of the tenancy was \$257.50; \$225.00 for rent, plus \$32.50 for cable. The tenancy agreement also indicates that the Tenant paid a \$150.00 security deposit.

The Agents testified that annual income reviews are required for all residents to ensure they remain eligible for subsidized housing and both parties agreed that the Tenant was given three letters on September 5, 2017, October 26, 2017, and November 23, 2017, requesting verification that he meets the income requirements to remain in subsidized housing. Although the Tenant testified that he did not provide the required documentation to the Landlord as he is attempting to obtain a lawyer, ultimately he agreed that required documentation was not provided to the Landlord. The Agents stated that when the Tenant failed to provide the required documentation after the final deadline elapsed, a Two Month Notice was posted to his door on December 11, 2017.

The Two Month Notice in the documentary evidence before me, dated December 11, 2017, has an effective vacancy date of February 28, 2018, and lists the following reason for ending the Tenancy:

- The Tenant no longer qualifies for the subsidized rental unit.

Although the Tenant could not confirm the exact date upon which he received the Two Month Notice, he acknowledged receiving it from his door. The Tenant testified that he was unable to apply within the 15 days allowable under the *Act* as he is disabled and bedridden much of the time. As a result, he sought more time to make the Application. The Tenant stated that he could not submit any medical documentation of his disability or his inability to file the Application in a timely manner as he has been refused medical care in their community for several years.

The Tenant testified that on the last day of the application period, December 29, 2017, he managed to attend a Service BC office just before closing in order to file the Application but inadvertently forgot his wallet. As a result, the Tenant stated that he was unable to pay the filing fee. The Tenant testified that he was advised by Service BC that the Application would be considered received on December 29, 2017, regardless of the fact that he had not paid the filing fee or submitted any documentation for a fee waiver and that he could return the following business day to pay the filing fee.

The Agents for the Landlord argued that the Tenant should not be granted additional time to make the Application as the Tenant consistently fails to meet deadlines and has not provided any corroborative evidence to establish that he had an exceptional reason for failing to apply on time.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the Two Month Notice on December 14, 2017, three days after it was posted to the door of his rental unit.

Based on the testimony and documentary evidence before me, I find that the first matter I must decide is whether the Tenant is entitled to more time to make the Application. The Tenant acknowledged attending a Service BC office on the last day of the application period and completing and submitting the Application without the prescribed fee or the documents required for a fee waiver. Records at the Residential Tenancy Branch (the "Branch") indicate that the Application was received by the Branch from Service BC on December 29, 2017, without the filing fee or any fee waiver documents. The Tenant was subsequently advised by telephone on January 2, 2018, that the Application would not be considered as received until they paid the filing fee or submitted the required documents for a fee waiver. The Tenant confirmed that he

subsequently attended a Service BC office on January 2, 2018, to resubmit the Application and pay the filing fee.

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 (the "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 testified that they are disabled, have difficulty with memory, and are bedridden for much of the time and therefore could not file the Application within the prescribed period. The Tenant did not submit any documentary evidence or call any witnesses in support of this testimony. In assessing the reliability of the Tenant's evidence that they could not file the Application on time because they are bedridden, I note that the Tenant was able to retrieve the Two Month Notice from their door and to attend a Service BC location in person on both December 29, 2017, and on January 2, 2018, in relation to this Application. Further to this, I note that the Tenant actually attended a Service BC location and filled out the Application within the prescribed period but was ultimately unable to pay the filing fee as they arrived at the office just prior to closing and forgot their wallet.

Although the Tenant testified that they were advised that they could pay the filing fee at a later date, in rendering this decision I am bound by the *Act* which states under section 49.1(5) that a Tenant has 15 days from the date they receive a Two Month Notice to file an Application. The *Act* also states under section 59 that an Application must be in the approved form, include full particulars of the dispute and be accompanied by the fee prescribed in the regulation or a waiver of that fee. Rule 2.6 of the Rules of Procedure states that an 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 Branch directly or through Service BC office. As a result, I find that despite the Tenant's belief to the contrary, the Application was not considered received by the Branch until January 2, 2017, the date upon which both the Application and the required fee were received.

I find the Tenant's testimony regarding why he was unable to file the Application on time contrary to his actions and as a result, I find the Tenant's testimony in this regard unreliable. Further to this, I find that the primary reason that the Tenant was unable to file his Application on time was because he forgot to bring either an adequate method of

payment for the filing fee or the documents required for a fee waiver. In my mind, this is not an exceptional reason for filing the Application late and as a result, the Tenant has not satisfied me on a balance of probabilities that they were unable to file their Application within the prescribed time period for exceptional or compelling reasons.

Based on the above, I find that the Tenant is not entitled to more time to make an Application to cancel the Two Month Notice and their late Application is therefore dismissed without leave to reapply. As the Tenant's Application is dismissed, I decline to grant the Tenant recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

Section 52 of the *Act* states the following with regards to the form and content of a Notice to End Tenancy:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The Two Month Notice in the documentary evidence before me, is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form. As a result, the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the

effective date of the Two Month Notice has passed, the Order of Possession will be effective March 31, 2018.

Pursuant to section 72 of the *Act*, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on March 31, 2018**, after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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: March 9, 2018

Residential Tenancy Branch