



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HW ROOMS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for February 1, 2018. I had allowed the landlord's adjournment application as landlord was not served with the tenant's application and evidence.

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; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant was represented by legal counsel at this hearing, while the landlord's agent DZ appeared on behalf of the landlord. Both parties attended the hearing and 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.

RN was named in the original dispute as a landlord in this application. RN attended the hearing and confirmed that he is no longer working for the landlord. The landlord's agent DZ requested that RN not be removed as a landlord in this dispute, but all parties were not opposed to an amendment to reflect RN's full name for the purposes of this application. Accordingly the application was amended to reflect RN's full legal name.

The adjournment decision dated February 2, 2018 noted the requirements for service of the hearing package and evidence. The tenant acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice, which he confirmed was personally served on him on November 4, 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 - Service of the tenant's Application for Dispute Resolution

The tenant testified that the landlord was served by way of Registered Mail with the tenant's application for dispute resolution hearing package on February 21, 2018. The tenant provided a tracking number for the package, which was confirmed to have been delivered on February 26, 2018. The landlord's agent disputes having received the tenant's application stating that he had received 28 pages, and not 18. The tenant testified the landlord was provided with all the documentation for this hearing.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the tenant served the landlord by way of registered mail. Although the landlord disputes having received the application, I find that the tenant served the landlord by way of registered mail, in accordance with section 89 (1)(c) of the Act. On this basis, I find the landlord deemed served with the application on February 26, 2018, five days after registered mailing.

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 November 20, 2017, although the 1 Month Notice was received on November 4, 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 by November 4, 2017, and he had filed for dispute resolution on November 20, 2017, sixteen days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances.

The tenant, in his application, stated that he suffers from anxiety, and required assistance with the filing of his application. The tenant requested the assistance of a special case worker, NH, on November 4, 2017, whom he had assumed would help him file his application. Legal counsel for the tenant stated in the hearing that due to a medical emergency, the tenant's application was not filed by NH. The tenant only became aware of this on November 19, 2017. The tenant included in evidence, a letter dated December 7, 2017 from NH, stating that she was in surgery on November 8, 2017, and was unable to continue assisting the tenant. On November 7, 2017, the tenant spoke to a social worker, BC, but did not request BC's assistance since he was under the assumption that NH had already filed his application. The tenant filed his application on November 20, 2017.

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"*.

Although the tenant suffers from a condition that makes it difficult for him to file his application without assistance, I find that the tenant was able to start the process by requesting the services of NH on November 4, 2017, who unfortunately fell ill. I find that the tenant had alternative resources available to him, including the assistance of people

such as BC. I am not satisfied that the tenant had provided a compelling reason for why he did not follow up to confirm that his application was filed until November 19, 2017.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has not met the burden of proof to justify that there is an exceptional reason for the late filing of his application. Under these circumstances, I am not allowing his application for more time to make his application, and accordingly the tenant's application to cancel the landlord's 1 Month Notice is dismissed.

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 both parties, 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*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

The tenant failed to make his application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take the above actions within ten days led to the end of this tenancy on December 31, 2017, the effective date on the 1 Month Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2017. As this has not occurred, 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 landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy has effectively come to an end, the tenant and any occupants on the premises are required to vacate the rental suite.

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 December 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.

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 22, 2018

Residential Tenancy Branch