



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FFT, MNRT, OLC
OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking more time to make an Application to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), cancellation of the One Month Notice, a Monetary Order for the cost of emergency repairs completed, an order for the Landlord to comply with the Act, regulation, or tenancy agreement, 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 the 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 Landlord and the Tenant, both 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, copies of the decision and any orders issued in her favor will be e-mailed to her at the e-mail address provided in the online application system. At the request of the Landlord, copies of the decision and any orders issued in his favor will be mailed to him at the address provided in the hearing.

Preliminary Matters

In her Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated 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.

As the Tenant applied for more time to make an Application to cancel the One Month Notice and to cancel a One Month Notice, I find that the priority claims relate to whether the Tenant's late Application will be granted and the continuation or end of the tenancy. I find that the other claims made by the Tenant are not sufficiently related to the reason for her late Application or the continuation of the tenancy, and as a result, I exercise my discretion to dismiss the Tenants claims a Monetary Order for the cost of emergency repairs completed and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to more time to make her late Application pursuant to section 66 of the *Act*?

If so, is the Tenant entitled to an order cancelling the One Month Notice?

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

Is either party 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 six month fixed-term tenancy began on April 1, 2013, and transitioned to a month to month tenancy thereafter. The tenancy agreement indicates that rent at the start of the tenancy was \$1,200.00 and due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of \$625.00 was paid by the Tenant.

The Tenant testified that she received a One Month Notice on January 27, 2018, but has two kids, and works full time so she was busy and very overwhelmed by the Application process and therefore could not file her Application until February 7, 2018. The Tenant also stated that she was advised by the Residential Tenancy Branch (the "Branch") by phone on February 7, 2018, that she still had time to dispute the One Month Notice and as a result, she applied for more time to dispute the One Month Notice and cancellation of the One Month Notice on February 7, 2018.

The One Month Notice in the documentary evidence before me, dated January 15, 2018, has an effective vacancy date of February 28, 2018, and states that the reason for ending the tenancy is because the Tenant is repeatedly late paying rent and the

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit or property. The One Month Notice also indicates that it was personally served on the Tenant on January 27, 2018, and the Tenant confirmed receipt of the One Month Notice on that date.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on January 27, 2018, the date she acknowledged receipt.

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 seeking to cancel the One Month Notice. The Tenant stated that she has two kids, works full time, and was very overwhelmed by the Application process. The Tenant also stated that she was advised by the Residential Tenancy Branch (the "Branch") by phone on February 7, 2018, that she still had time to dispute the One Month Notice.

Section 47(4) of the *Act* states that a tenant may dispute a Notice to End Tenancy under this section by making an Application within 10 days after the date the tenant receives the One Month Notice. In the hearing the Tenant testified that she received the One Month Notice on January 27, 2018. As a result, I find that February 6, 2018, would have been the 10th day after the date she received the One Month Notice and the last day of the legislated application period.

Although the Tenant testified that she was advised on February 7, 2018, by the Branch that she still had time to apply, I am bound by the *Act* which states under section 47(4) that a tenant may dispute a One Month Notice by making an Application within 10 days after the date the tenant receives the One Month Notice. I also note that the Tenant applied for more time to dispute the One Month Notice on February 7, 2018, and therefore knew at the time of the Application that the legislated application time period had elapsed. I find that despite the Tenant's belief to the contrary, the application period ended on February 6, 2018, not February 7, 2018. As the Tenant did not submit her Application and pay the prescribed fee until February 7, 2018, I find that the Tenant did not apply within the prescribed application period.

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 her reason for filing the Application late is because she works full-time, has two, kids, and was overwhelmed by the application process. In my mind, these are ordinary, every-day reasons for not having complied with the legislated application period. Further to this, the Tenant acknowledged that she did not contact the Branch regarding the One Month Notice until February 7, 2018, which is after the last day of the legislated application period. As a result, I find that the Tenant has failed to satisfy me on a balance of probabilities that she had an exceptional reason for filing the Application late. Based on the above, the Tenant is not entitled to more time to make an Application to cancel the One Month Notice and her late Application seeking cancellation of the One Month Notice is therefore dismissed without leave to reapply. As the Tenant's Application is dismissed, I decline to grant her 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 One 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*. Although the effective date of the One Month Notice has passed, the parties agreed that rent had been paid for April 2018. As a result, the Order of Possession will be effective April 30, 2018, at 1:00 PM.

As the Landlord was successful in his Application seeking an Order of Possession based on the One Month Notice, I find that the Landlord is also entitled to the recovery of the \$100.00 filing fee. The Landlord is therefore entitled to retain \$100.00 from the security deposit paid by the Tenant, or to otherwise recover this amount from the Tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on April 30, 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: April 12, 2018

Residential Tenancy Branch