



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC MT RP FF

Landlord: OPC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 7, 2018.

The Landlord was represented by two agents at the hearing and will be collectively referred to as the "Landlord." The Tenant also attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages. The Landlord also confirmed receipt of the Tenant's amended application.

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 *Residential Tenancy Act* (the "Act"), a number 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 both applications deal 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 grounds:

- to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).
- More time to file this application

Further, since the issues that the Landlord has cross-applied for all relate to the Notice and the end of the tenancy, they will be considered in this hearing.

Issues(s) 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 stated that she received the Notice on March 6, 2018. A copy of this Notice was also provided into evidence, which lists the following ground for ending the tenancy:

Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- put the Landlord's property at significant risk.

And,

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Section 47 of the *Act* states that a Tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the Tenant receives the notice. As the Tenant received the Notice on March 6, 2018, she had until March 16, 2018, to dispute the Notice.

After reviewing the file, I note that the Tenant's initial application was made on February 22, 2018, and it did not include an application to cancel the Notice. The Tenant did not apply to cancel the Notice until she filed the amendment on April 4, 2018. In this case, the Tenant did not apply to cancel the Notice within the allowable 10 day window, which lapsed on March 16, 2018.

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**.

After reviewing the file before me, I note that the Tenant stated that she was late applying for this hearing because she has several different medical issues. The Tenant provided a letter from her doctor saying that she has chronic medical conditions, shoulder pain, and will require a shoulder replacement in the near future. The letter from the doctor states that sometimes the Tenant's shoulder pain is such that she has difficulty driving or leaving the apartment.

I acknowledge that the Tenant has some chronic medical conditions, including shoulder pain. However, I am mindful that it took her 29 days, after receipt of the Notice, to file her amended application to cancel the Notice. The *Act* allows the Tenant 10 days to make an application to cancel the Notice but in this case an additional 19 days lapsed. Although I am mindful that the Tenant has some medical issues, the evidence before me does not sufficiently demonstrate that her circumstances were exceptional, such that it warrants extra time to file an application for review. I am also mindful that the Tenant took almost triple the allowable time to apply to cancel the Notice, and it is not clear what attempts she made during that time to contact the branch or explore ways to file her amended application. Ultimately, I am not satisfied that the circumstances, as presented by the Tenant during the hearing, are sufficiently strong or compelling.

As a result, I find that the Tenant is not entitled to more time to make an Application to cancel the Notice and her late Application is therefore dismissed in its entirety. Since the Tenant's Application is dismissed, it is not necessary to consider the detailed reasons behind the Notice, which were presented in the hearing.

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 May 31, 2018.

Since the Landlord was substantially successful in this hearing, I award her recovery of the filing fee she paid to make this application, pursuant to section 72 of the Act. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

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 **May 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: May 8, 2018

Residential Tenancy Branch