Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MT, CNC

Introduction
This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act, (the "Act"), to cancel One Month Notice to End Tenancy for Cause, (the "Notice") issued on April 17, 2018.

The Landlord's Agents (the "Agents"), the Tenant and the Tenant's Advocate (the "Advocate") attended the hearing and were each affirmed to be truthful in their testimony. The Agents, the Tenant and the Advocate, were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided
- Should the Tenant be allowed more time to dispute the Notice to end tenancy?
- Should the Notice issued on April 17, 2018, be cancelled pursuant to section 47 of the Act?
- Is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Background and Evidence
The undisputed testimony was that the tenancy began on May 1, 2017, as a month to month tenancy. Rent in the amount of $650.00 is to be paid by the first day of each month and the Tenant paid a $350.00 security deposit. The Tenant and the Agents testified that the Tenant's rent is paid automatically by the Ministry and that the June 2018 rent payment has been paid in full.

The undisputed testimony of the Agents was that the Notice to end tenancy was

personally served to the Tenant on April 17, 2018. The reason for the Notice was checked off as follows:

- *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*

The Notice states the Tenant must move out of the rental unit by May 31, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that he did receive he Notice, and stated that he had not disputed the Notice within the required 10 days as he was not aware that he needed to. The Tenant testified that he filed to dispute the Notice on May 2, 2018, after a friend advised him to do so.

The Tenant is requesting additional time to file to dispute the Notice, pursuant to section 66 of the *Act* and to cancel the Notice pursuant to section 47(4) of the *Act*.

The Agents are requesting an order of possession if the Tenant is unsuccessful in cancelling the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Pursuant to section 66 of the *Act*, an extension of time may only be granted if the party requesting the extension has proof that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

Director's orders: changing time limits

> **66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59
> (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

In this case, the Tenant testified that he did not dispute the Notice as he did not know that he should until a friend advised him. The Tenant testified that he had received the

Notice; however, he could not say if he had read the Notice. I find that failure to read the Notice is insufficient evidence of an exceptional circumstance under section 66 of the *Act*.

Therefore, I dismiss the Tenant's application to be allowed additional time to file to dispute the Notice.

I find that the Tenant personally received the Notice on April 17, 2018. Pursuant to section 47(4) the *Act,* the Tenant had 10 days to dispute the Notice. I find the Tenant had until April 27, 2018, to file his application to dispute the Notice. The Tenant filed his application on May 2, 2018, which is outside the statutory time limit.

Therefore, I find that the Tenant is conclusively presumed to have excepted the Notice and that his tenancy would end in accordance with that Notice. I find the Notice issued on April 17, 2018, is valid and enforceable.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 p.m. on June 30, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion
The Tenant's Application to request more time to cancel the Notice, issued on April 17, 2018, is dismissed.

I find that the Tenant did not dispute the Notice within the statutory time limit and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on June 30, 2018**. 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: June 7, 2018

_____
Residential Tenancy Branch