



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY (1974)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 12, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting more time to file the Application; and
- an order cancelling a One Month Notice to End Tenancy for Cause (the "One Month Notice").

The Tenant attended the hearing on his own behalf and was assisted by D.D., an advocate. The Landlord was represented at the hearing by A.W., an agent. Both the Tenant and A.W. provided a solemn affirmation at the beginning of the hearing.

The parties each received notice of this dispute resolution hearing from the Residential Tenancy Branch. The Tenant testified that the original Application package and documentary evidence upon which he intended to rely was served on the Landlord in person. On behalf of the Landlord, A.W. acknowledged receipt.

The Landlord submitted documentary evidence in response to the Application. According to A.W., it was served on the Tenant by posting a copy to the door of the rental unit on February 7 and March 16, 2018. Service was witnessed by C.P. On behalf of the Tenant, D.D. advised that no documentary evidence was received by the Tenant. However, in this case, whether or not the Landlord's documentary evidence was received by the Tenant does not impact the outcome. I find there is no prejudice to the Tenant in proceeding with the hearing.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was directed. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The original hearing took place on March 12, 2018. The original decision was issued on March 14, 2018. On March 19, 2018, the Tenant applied for a review of the original decision on the basis that he was unable to attend the original hearing for reasons that could not be anticipated and were beyond his control. In a review decision issued on March 22, 2018, the Tenant was granted a new hearing. The parties' evidence, and my findings, are described below.

Issues to be Decided

1. Is the Tenant entitled to more time to file the Application?
2. Is the Tenant entitled to an order cancelling the notice to end tenancy for cause?

Background and Evidence

The parties testified to the terms of the tenancy agreement. They confirmed the tenancy began on September 1, 2013. Currently, rent is due in the amount of \$375.00 per month. The parties were unclear with respect to whether or not a security deposit was paid.

The Tenant requested an extension of time to make the Application. The Application submitted by the Tenant confirmed the One Month Notice was received on December 28, 2017. On behalf of the Tenant, D.D. indicated the Application was submitted to the Residential Tenancy Branch on January 12, 2018, which was supported by date-stamped documents submitted by the Tenant.

The Tenant was asked why the Application was not submitted within 10 days after receipt of the One Month Notice, as required under section 47(4) of the *Act*. The Tenant advised that he was working. He also advised that he tried to discuss the matter with the Landlord's agent, who was not responsive. D.D. declined to make further submissions in this regard.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The One Month Notice was received by the Tenant on December 28, 2017. Accordingly, pursuant to section 47(4) of the *Act*, he had until January 8, 2018, to dispute the One Month Notice by filing an application for dispute resolution. Section 47(5) of the *Act* confirms that failure to do so results in the conclusive presumption the Tenant accepted the end of the tenancy.

The Tenant submitted the Application to the Residential Tenancy Branch on January 12, 2018, four days after the deadline in section 47(4) of the *Act*. Section 66 of the *Act* confirms that the director may extend a time limit established under the *Act* in “exceptional circumstances”. In the case, the Tenant testified that he was working and the Landlord did not respond to his attempts to discuss the issue. I find that these are not exceptional circumstances that would justify an extension of the time limit to file the Application. Accordingly, I find that the Application was filed late, and that the Tenant was conclusively presumed to have accepted the tenancy ended on January 31, 2018, the effective date of the One Month Notice, pursuant to section 47(5) of the *Act*. The Application is dismissed, without leave to reapply. As a result, it has not been necessary to consider the merits of the One Month Notice.

When a tenant’s application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession to the landlord, as long as the notice to end tenancy complies with the form and content requirements of section 52 of the *Act*. The language in the *Act* is mandatory. Having reviewed the One Month Notice, I find it complies with the requirements of section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant’s Application is dismissed, without leave to reapply.

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in 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 6, 2018

Residential Tenancy Branch