



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*;
- a Monetary Order for damage or compensation pursuant to section 67 of the *Act*; and
- more time to cancel a notice pursuant to section 66 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's agent K.B. (herein referred to as "the landlord") spoke on behalf of the corporate landlord.

As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package, which included a typed letter from the tenant marked with "Draft" at the top, sent by the tenant via registered mail on May 28, 2018. The tenant confirmed receipt of the landlord's evidence package, containing copies of email and letter correspondence, sent by the landlord via registered mail on June 10, 2018. As such, I find that these documents were served in accordance with section 89 of the *Act*.

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Late Service of Tenant’s Additional Evidence

The tenant stated that she had sent approximately 60 pages of hand-written notes, as evidence, to the landlord via registered mail on June 29, 2018. The tenant also submitted the evidence to the Service BC office in her area so that it could be uploaded to the Residential Tenancy Branch dispute website. The landlord acknowledged receiving this package on July 3, 2018. As this hearing was scheduled for July 10, 2018, the tenant’s evidence was not received by the respondent nor to the Residential Tenancy Branch “not less than 14 days before the hearing” as required by Rule 3.14 of the Residential Tenancy Branch Rules of Procedures, which states, in part:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

...

The landlord objected to the consideration of the tenant’s late evidence, given that it was a lengthy document, which the landlord had not been able to completely review or respond to prior to the hearing.

I advised the tenant that her additional evidence had not been served in compliance with the Rules of Procedure. However, I advised the tenant that she could still provide verbal testimony regarding this evidence. The hearing for this matter lasted approximately 85 minutes. The landlord’s verbal testimony comprised a total of approximately 12 minutes and the tenant’s verbal testimony comprised approximately 27 minutes. The remainder of the hearing time was used to confirm the parties’ information and service of documents, explain procedural matters, and discuss and document the terms of the parties’ settlement agreement.

Preliminary Issue – Tenant’s Request for More Time to Apply for Dispute

The tenant confirmed that she received the landlord’s One Month Notice posted on her door on May 9, 2018. Section 47 of the Act provides that upon receipt of a One Month Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Details

regarding the requirements for a tenant disputing a notice are provided on the second page of the One Month Notice form, as follows, in part:

- *You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. **An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.***
- *If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice...*

[My emphasis added]

The tenant submitted her application to dispute the One Month Notice on May 23, 2018, which is beyond the 10 days allowed under section 47 of the *Act*. However, the tenant's application included a request for more time to file an application to dispute the notice. The tenant explained that she was unable to file her application within the allowable time limit for the following reasons: she had physical limitations related to failed carpal tunnel surgery; she had lost her phone; she had tried to borrow a computer to prepare her application submission but there was a software issue; she had then gone to the library to access resources there to prepare her application; and she experienced financial strain trying to find ways to pay for the costs associated with preparing her application, including paying for the registered mail costs.

I explained to the tenant that requests for more time to file an application are only considered in "exceptional" circumstances, for instance when the applicant is in the hospital and is unable to contact someone to act on their behalf. Residential Tenancy Policy Guideline 36. Extending a Time Period sets out the consideration for "exceptional" circumstances when an applicant seeks to extend a time limit provided by the *Act*, as follows, in part:

Exceptional Circumstances

*The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is **very strong and compelling**. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the*

*party putting forward said "reason" must have some **persuasive evidence to support the truthfulness of what is said.***

...

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

...

[My emphasis added]

In this case, the tenant did not provide any documentary evidence to support her reasons for failing to submit her application to dispute the notice. At one point during her testimony, the tenant stated that she was shovelling snow, which contradicts the tenant's testimony regarding physical limitations impacting her ability to comply with the required time limit. Further to this, the landlord disputed the tenant's statement that her physical limitations impacted her ability to submit her application on time. The landlord stated that she believes the tenant's claims are "false" as she has witnessed the tenant out walking around the neighbourhood without issue, on several occasions.

As the tenant has not submitted any evidence to support her reasons for failing to comply with the 10-day time limit for disputing a notice to end tenancy, and the tenant's reasons are not "exceptional" circumstances as explained in Policy Guideline 36, I find that the tenant's request for more time to apply to cancel the notice to end tenancy is declined.

Preliminary Issue – Tenant's Application for Monetary Compensation

As part of her application, the tenant sought monetary compensation for receipts submitted for the administrative costs related to filing her application, which included: registered mail; printing and photocopying; and public transit. I explained to the tenant that the \$100.00 filing fee is the only cost related to an application for dispute resolution for which an applicant can apply to recover. In this case, the applicant did not pay the \$100.00 filing fee as the applicant received a fee waiver for this application. Therefore, I find that this part of the tenant's application is dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on August 31, 2018, by which time the tenant and any other occupants will have vacated the rental unit.
2. The landlord will provide the tenant with receipts for rent payments, by noting the receipt with the condition that the payments are "for use and occupancy only".
3. This tenancy ends by way of this settlement and the parties agree that: the landlord's One Month Notice dated May 9, 2018, is cancelled and of no further force or effect; and the tenants' application for dispute resolution in its entirety is cancelled.
4. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's application, the landlord's One Month Notice, and all issues currently under dispute at this time, and that they agreed free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms and conditions of the tenancy agreement, the *Act*, and the associated regulations.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenant by the landlord **only** if the tenant fails to vacate the rental unit

by 1:00 p.m. on August 31, 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.

The landlord's One Month Notice to End Tenancy for Cause, dated May 9, 2018, is cancelled and is of no force or effect.

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: July 11, 2018

Residential Tenancy Branch