



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGE JANG
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC

Introduction

This decision pertains to the tenant's application for dispute resolution made June 21, 2018, and again by way of amendment on August 1, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent and an order cancelling a One Month Notice to End Tenancy for Cause.

The tenant and the landlord's agent attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies 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 application is dismissed and the landlord's notice to end tenancy complies with the Act.

I further note that the issue with which this application addresses are the same as that of the related file, of which the file number is included in the cover page of this Decision. As I advised the parties, the issues on this application will render the application and hearing scheduled for August 23, 2018, moot. The hearing scheduled on August 23, 2018, for the related file, is hereby cancelled.

Preliminary Issue –Order Cancelling a 10 Day Notice to End Tenancy for Unpaid Rent

The tenant testified that, and Residential Tenancy Branch files support the tenant's submissions, he sought to amend his application from disputing a 10 Day Notice to End Tenancy for Unpaid to disputing a One Month Notice to End Tenancy for Cause. As such, I will only deal with the tenant's application as it pertains to the One Month Notice to End Tenancy for Cause (the "Notice"). The parties acknowledged that they understood this.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

At the commencement of the hearing, the landlord noted that the date on which the tenant applied to dispute the Notice was past the date permitted under the Act to dispute the Notice. As such, the tenant sought an extension of time in which to be permitted to dispute the Notice, pursuant to section 66(1) of the Act, and I heard testimony from the tenant regarding this issue. I further advised the parties that I would reserve judgment on this aspect of the application until my Decision.

The landlord testified that he served the Notice on the tenant, in-person, on July 17, 2018. The Notice was signed and dated by the landlord, included the address of the rental unit, stated that the effective end of tenancy date of August 31, 2018, included the grounds for ending the tenancy on page 2 of the Notice, and was completed on Residential Tenancy Branch Form #RTB – 33. The tenant testified and acknowledged having received the Notice on July 17, 2018.

I referred the tenant to page 2 of the Notice, in which it states: "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 1 of this Notice."

The tenant testified that he had just gotten out of the hospital on July 13, 2018, and was unable to file a dispute resolution application within the ten days—that is, by July 27—due to medical and health issues. He testified that he is undergoing extensive medical treatment due to three major surgeries and is on IV therapy three days a week.

The tenant applied for dispute resolution in regard to the Notice by filing an Amendment

to an Application for Dispute Resolution on August 1, 2018, a full 5 days after the expiry of the 10-day dispute resolution deadline.

Analysis

Section 47(5) of the Act states that “If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.”

Section 66(1) of the Act states that an arbitrator “may extend a time limit established by this Act only in exceptional circumstances.”

While the tenant has no doubt experienced some very serious medical issues and by all accounts has undergone some very serious surgeries, the tenant did not submit any medical or documentary evidence establishing that his mobility, or lack thereof, prevented him from responding to the Notice within the ten days permitted by section 47(4) of the Act. He did not testify, submit, or provide any evidence establishing that he was unable to file an application for dispute online. Nor did he testify, submit, or provide any evidence establishing that he was unable to obtain assistance from another person in this regard. I am not persuaded by the argument that “RTB staff told” him that he could apply when he did. Page 2 of the Notice is explicit in providing a caution to the tenant that they have ten days in which to apply for dispute resolution.

Having carefully reconsidered the testimony of the tenant, I do not find that there existed exceptional circumstances under which I may extend the time limit for him to dispute the Notice, pursuant to section 66(1) of the Act. As such, I do not grant an extension of time in which the tenant may dispute the Notice. Therefore, I dismiss the tenant’s application for dispute resolution without leave to reapply.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord’s notice to end tenancy and their application for dispute resolution is dismissed, or the landlord’s notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state

the effective date of the notice, (4) state the ground(s) for ending the tenancy, and (5) be in the approved form.

Having reviewed the Notice issued on July 17, 2018, I find that it complies with section 52 of the Act, and therefore I grant the landlord an order of possession.

Conclusion

I dismiss the tenant's application without leave to reapply.

The landlord is entitled to an order of possession effective August 31, 2018 at 1:00 p.m., pursuant to section 55(1) of the Act. This order 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 Act.

Dated: August 17, 2018

Residential Tenancy Branch