



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NRP LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, MNDCT

Introduction

On July 26, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*.

On July 26, 2018, the Tenant amended her Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package in person to the Landlord’s office, but she is not sure when she did this. The Landlord confirmed that this package was received in late July 2018. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not serve her evidence to the Landlord. As such, her evidence could not be considered when rendering this decision. The Landlord advised that she served their evidence on September 4, 2018 by registered mail and the Tenant confirmed receipt of this. As per Rule 3.15 of the Rules of Procedure, the Landlord’s evidence was accepted and considered in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

At the outset of the hearing, the Tenant advised that she was no longer seeking a Monetary Order. As such, this portion of the claim was dismissed.

Issue(s) to be Decided

- Is the Tenant entitled to have the notice cancelled?
- Is the Tenant entitled to be granted more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant and Landlord agreed that the tenancy started on June 1, 2016. Rent was currently established at an amount of \$920.40 per month, due on the first day of each month. A security deposit of \$432.50 was paid.

The Landlord stated that the Notice was served to the Tenant by posting it on the Tenant's door on July 11, 2018. The reasons the Landlord served the Notice are because the "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, or put the landlord's property at significant risk." The Notice indicated that the effective end date of the Notice was August 31, 2018.

The Tenant advised that she received the Notice on July 11, 2018; however, she stated that the reason she did not dispute the Notice on time was because she had an accident on July 22, 2018 that prevented her from making the Application.

Analysis

With respect to the Notice served to the Tenant on July 11, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on July 11, 2018 by posting it to the Tenant's door. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted to the door. However, the Tenant acknowledged receiving the Notice on July 11, 2018. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."* I find it important to note that this information is provided on the second page of the Notice as well.

As the Tenant received the Notice on July 11, 2018, the tenth day to dispute the Notice fell on Saturday July 21, 2018. As July 21, 2018 was a weekend, the Tenant must have made this Application by July 23, 2018 at the latest. However, the undisputed evidence is that the Tenant made her Application on July 26, 2018. As the Tenant was late in making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice "only in exceptional circumstances." When the Tenant was questioned if there were any exceptional circumstances that prevented her from disputing the Notice within the required time frame, she stated that the reason she did not dispute the Notice on time was because she had a fall where she broke her ribs and was hospitalized. However, this incident happened on July 22, 2018 and she stated that she did not have a reason for why she did not dispute the Notice in the 10 days leading up to her accident. She also did not provide a reason why she could not have had someone else make the Application for her if she was unable to.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. While the Tenant has provided a reason for not disputing the Notice on time that may satisfactorily be considered exceptional, this happened on the second to last day that she could make her Application. Furthermore, the Tenant has not provided a reason for not disputing the Notice before this accident. As such, I find that there was insufficient evidence that the Tenant had significant issues or exceptional circumstances that

prevented her from disputing the Notice on time. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenant has paid rent for September 2018 and as the Landlord allowed more time for the Tenant to vacate the rental unit, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on October 31, 2018**. As a note, the Tenant must still pay October 2018 rent in full.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2018** after service of this Order on the Tenant. 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: September 18, 2018

Residential Tenancy Branch