



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, MT

Introduction

On August 16, 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*.

The Tenant attended the hearing; however, the Landlord did not make an appearance. The Tenant provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package in person to the Landlord on August 18, 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.

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*.

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 stated that the Notice was posted to his door on July 27, 2018. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/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 he received the Notice on August 8, 2018 and that the reason he did not dispute the Notice on time was because he was hospitalized from July 27, 2018 to August 8, 2018 and this prevented him from making the Application on time. He provided into evidence a letter from Vancouver Coastal Health confirming that he was hospitalized during this time frame.

Analysis

With respect to the Notice served to the Tenant on July 27, 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 27, 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 August 8, 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 August 8, 2018, the tenth day to dispute the Notice fell on August 9, 2018. The undisputed evidence is that the Tenant made his

Application on August 16, 2018. As the Tenant was late in making this Application, he 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.” Based on the letter provided into evidence, I find that there was sufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented him from disputing the Notice on time. As such, I grant the Tenant’s request for more time to make the Application to Cancel the Notice.

With respect to the validity of the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice and I find that the Notice of July 27, 2018 is of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 27, 2018 to be cancelled and 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: October 4, 2018

Residential Tenancy Branch