



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONNAUGHT MANAGEMENT LTD. DBA CML PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC FFL CNC MT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and

KW and CH appeared as agents on behalf of the landlord in this hearing. Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant DM confirmed receipt of the 1 Month Notice, which was posted on their door on September 24, 2018. Accordingly, I find that the 1 Month Notice was deemed served to the tenants on September 27, 2018 in accordance with sections 88 and 90 of the *Act*.

Preliminary Issue—Tenants’ Application for an Extension of Time to File their Application for Dispute Resolution

The tenants filed their application for dispute on October 10, 2018 although the 1 Month Notice was deemed served to the tenants on September 27, 2018. The tenants have the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenants, and the tenants filed for dispute resolution on October 10, 2018, 13 days later after being considered deemed served with the 1 Month Notice. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenants, in their application, stated that they were occupied with the care of their autistic son, who only attends school on part days, and is routine oriented.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants have not met the burden of proof to justify that there is an exceptional reason for the late filing of their application. Although the tenants established that they were under the burden of caring for their autistic son, they did not provide a specific or compelling reason why the application was made late. Under these circumstances, I find that the tenants have failed to make their application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice, and did not have a compelling reason to do so. I dismiss, without leave to reapply, the tenants’ application for more time to make their application.

Issues to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to recover the filing fee?

Background and Evidence

This month-to-month tenancy began on July 1, 2013 with monthly rent currently set at \$1,025.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$470.00.

The landlord issued the 1 Month Notice to the tenants providing the following grounds: “*the tenant is repeatedly late paying rent*”. The landlord’s agents testified that the tenant was late on six occasions in the last 10 months.

The tenants do not dispute that they were late in paying their rent, but that it was because of the circumstances they faced. DM testified that he lost his employment insurance payments, and was dealing with his ill uncle and autistic son.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the tenants were served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

I find that the tenants failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. I dismissed the tenants’ application for more time to make their application under section 66 of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice, October

31, 2018. In this case, this required the tenants and anyone on the premises to vacate the premises by October 31, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful with their application, I allow the landlord to recover the \$100.00 filing fee for this application. The landlord continues to hold the tenants' security deposit of \$470.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I dismiss the tenants' application for more time to cancel the 1 Month Notice dated September 24, 2018. The tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice, October 31, 2018.

I find that the landlord's 1 Month is valid and effective as of October 31, 2018. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the filing fee for this application.

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: November 20, 2018

Residential Tenancy Branch