



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, FF

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 6, 2018 (the "Application"). The Tenant applied for more time to extend the time limit established by the *Residential Tenancy Act* (the "Act") to make an Application for dispute resolution to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated October 29, 2018 (the "One Month Notice"), an order cancelling the One Month Notice, and recovery of the filing fee pursuant to the *Act*.

The Tenants, Landlord, Landlord's agent I.S., and the Landlord's counsel T.B. attended the hearing, each providing a solemn affirmation at the beginning of the hearing.

Tenant A.G. testified that he served the Landlord in person with the Application package on December 12, 2018. T.B. confirmed receipt of the Application, however, indicated that the Landlord did not receive any documentary evidence from the Tenants. T.B. indicated that the Landlord wanted to proceed with the hearing regardless.

T.B. stated that the Landlord served the Tenants with his documentary evidence on January 11, 2018, by placing it in the mailbox of the forwarding address provided by the Tenants on the Application package. A.G. testified that they had not yet received the Landlord's evidence, however, A.G. testified that he was unsure of the accuracy of the mailing address he provided to the Landlord for service.

No further issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served to the addresses listed in the Application, for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). 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 *Residential Tenancy Act (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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to more time to allow the Application for Dispute Resolution, pursuant to Section 66 of the *Act*?
2. Is the Tenant entitled to an order cancelling One Month Notice, pursuant to Section 47 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Preliminary Matters

T.B. testified that the Landlord served the One Month Notice dated October 29, 2018 to the Tenants in person on October 29, 2018. The One Month Notice has an effective date of November 30, 2018. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served on October 29, 2018, pursuant to Section 88 of the *Act*.

Section 47(4) of the *Act* provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, November 30, 2018.

The Tenants received the One Month Notice on October 29, 2018. The Tenants had until November 8, 2018 to make an Application for dispute resolution, or it can be conclusively presumed that the tenants have accepted the tenancy ends on the effective date of the notice.

The Tenants filled their Application for dispute resolution on December 6, 2018. According to Section 66(3) of the *Act*, the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I find that the effective date on the One Month Notice is November 30, 2018. The Application made on December 6, 2018 is beyond the effective date of the One Month Notice, therefore I am not permitted under the *Act* to allow more time to consider the Application.

I find the Tenants were out of time to dispute the One Month Notice and are conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, November 30, 2018.

In light of the above, I dismiss the Tenants' Application for more time to extend the time limit established by the *Residential Tenancy Act* (the "Act") to make an Application for dispute resolution to obtain an order cancelling the One Month Notice, an order cancelling the One Month Notice, and recovery of the filing fee without leave to reapply.

When a Tenant's Application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence by the parties, I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

Conclusion

Pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. If the Tenants fail to comply with the order of possession it 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 *Residential Tenancy Act*.

Dated: January 22, 2019

Residential Tenancy Branch