



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes

CNC MT FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on February 4, 2019. The Tenant's applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1-Month Notice to End Tenancy (the Notice); and,
- more time to make an application to cancel the Notice.

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence. However, the Tenant stated that he did not get the Landlord's evidence. The Landlord was unable to provide any proof of service. As discussed during the hearing, the Landlord has failed to sufficiently serve his evidence to the Tenant, and as a result, has provided no admissible evidence into the proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenant has applied for more time to make an application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenant stated that he received the Notice on December 7, 2018. The Tenant also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Section 47 of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. As the Tenant received the Notice on December 7, 2018, they had until December 17, 2018, to dispute the Notice.

After reviewing the file, I note that the Tenant's application was not made until December 21, 2018. In this case, the Tenant did not apply within the allowable 10 day window, which lapsed on December 17, 2018.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

After reviewing the file before me, I note that the Tenant stated that he was late applying for this hearing because he did not have money to pay for the review.

I acknowledge that the Tenant waited to file his application because he didn't have money. However, I am mindful that there is a fee waiver application for individuals who are financially constrained. There is no evidence the Tenant made an application for fee waiver, or that he tried to apply within the allowable 10 day window. I do not find the Tenant has sufficiently demonstrated that his circumstances were exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenant is not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed in its entirety.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a

Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on February 28, 2019.

Since the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's request for more time to make an application to cancel the Notice is dismissed. Further, the Tenant's application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **February 28, 2019, at 1pm**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: February 5, 2019

Residential Tenancy Branch