



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

On January 26, 2019, the Tenant applied for more time to make an application to cancel a notice to end tenancy and to cancel a One Month Notice To End Tenancy For Cause dated December 5, 2018.

The Tenant and Landlord's agents ("the Landlord") attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

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

Issues to be Decided

- Should the Tenant be granted more time to dispute the One Month Notice To End Tenancy For Cause?

Background and Evidence

The parties testified that the tenancy began on January 1, 2017, and is currently on a month to month basis. Rent is geared to income. Rent in the amount of \$328.00 is due to be paid to the Landlord by the first day of each month. The Tenant was not required to pay a security deposit or pet damage deposit.

The Landlord testified that the rental property contains 280 units consisting of bachelor and one bedroom apartments.

On December 5, 2018, the Landlord issued a One Month Notice To End Tenancy For Cause ("the One Month Notice") to the Tenant. The reasons for ending the tenancy selected on the Notice are:

*Tenant has allowed an unreasonable number of occupants in the unit /site
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*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice. The effective date of the Notice is January 31, 2019.

The Tenant testified that he found the One Month Notice on his door on December 7, 2018, two days after it was posted. The Tenant disputed the One Month Notice on January 14, 2019, and has requested more time to dispute the Notice. The Tenants application was made 28 days late.

The Tenant was asked to provide reasons for why he did not dispute the One Month Notice within 10 days of receiving the Notice. The Tenant testified that he is in poor health and was sick with pneumonia. The Tenant testified that he read the Notice and was aware of the 10 Day dispute period. He testified that he spoke to the Landlord about the Notice to try and continue the tenancy or postpone the eviction. The Tenant testified that he went to a doctor; was prescribed an antibiotic and he returned home. The Tenant testified that he did not make any attempts to have someone dispute the Notice on his behalf.

The Tenant testified that he personally attended the Residential Tenancy Branch office in Burnaby to dispute the Notice on January 14, 2019.

The Tenant did not provide any documentary evidence in support of his application for more time to dispute the One Month Notice.

In response, the Landlord testified that she met with the Tenant before Christmas and discussed the One Month Notice. She testified that the Tenant was informed that the Landlord was proceeding with the eviction.

In response to the Tenant's testimony that he was too sick to dispute the One Month Notice, the Landlord testified that the Tenant was in and out of the building frequently. The Landlord provided a copy of the building entry door log report showing that the Tenant was mobile.

The Landlord testified that they are seeking to enforce the One Month Notice and requested an Order of Possession for the rental unit. The Landlord testified that the rent for February 2019 was accepted from the Tenant for use and occupancy only.

Analysis

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Residential Tenancy Branch Policy Guideline # 36 Extending a Time Period provides an explanation regarding the meaning of an exceptional circumstance.

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Section 47(5) of the Act provides:

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 (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the evidence and testimony before me I make the following findings:

I find that the Tenant received the 1Month Notice on December 7, 2018, and was aware that he had 10 Days to dispute the Notice. The Tenant discussed the Notice with the Landlord and attempted to extend the eviction but was not successful.

I do not accept the Tenant's submission that his illness prevented him from disputing the Notice in a timely manner. The Tenant was able to attend a doctor's office and was sent home with a prescription. I find that the Landlord's evidence of the building entry log shows that the Tenant accessed the front door and main entrance of the rental unit numerous times between December 23 and December 29, 2018. I find that the Tenant was mobile.

After considering the evidence before me, I find that the Tenant's reason for not disputing the One Month Notice within the required time is not strong or very compelling. There is no documentary evidence from the Tenant, such as a letter from a doctor to support his reason.

After considering the evidence before me, I dismiss the Tenant's request for more time to make an application to dispute the One Month Notice. The Tenant's Application to cancel the One Month Notice To End Tenancy For Cause dated December 5, 2018 is dismissed.

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 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice issued by the Landlord complies with the requirements for form and content. The Landlord is entitled to an order of possession on the effective date of the notice. Since the effective date of the One Month Notice has passed by, and since the Tenant has paid the rent in full for the month of February 2019, the Landlord is granted an order of possession effective at 1:00 pm on February 28, 2019.

Conclusion

The Tenant received a One Month Notice To End Tenancy For Cause and did not file to dispute the Notice within the required time period.

There is insufficient evidence from the Tenant to establish that there was an exceptional circumstance that prevented him from disputing the Notice within the required time period.

I dismiss the Tenant's request for more time to make an application to dispute the One Month Notice To End Tenancy For Cause dated December 5, 2018. The Tenant's Application to cancel the One Month Notice is dismissed.

I grant the Landlord an order of possession effective at 1:00 pm on February 28, 2019 after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

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 25, 2019

Residential Tenancy Branch