



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1085791 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, FFT, OPC, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On January 15, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act"), seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 18, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Cause pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and G.J. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

At the beginning of the hearing, the parties were difficult to hear due to an issue with static or a poor phone connection. As such, I exited the call and dialled back into the hearing in an attempt to resolve the issue. This was unsuccessful, so the Landlord did the same and this did not resolve the problem either. The Tenant then exited the conference call and the phone issues were not present anymore; however, when he dialled back into the hearing, the same phone issues occurred. The Tenant was asked to move to a different area of his rental unit to potentially fix the issue if it was due to poor reception; however, the Tenant was unable to move and advised of his injury. I advised the parties that the hearing would continue and that they should notify me if there was anything that they had not heard or understood. Both parties agreed to continue.

The Tenant advised that he served the Notice of Hearing package and evidence by mail to the Landlord, but he was not sure if it was by registered mail or regular mail. The Landlord confirmed that this package was received by registered mail. 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 and evidence.

The Landlord advised that he served the Notice of Hearing package and evidence by registered mail to the Tenant and the Tenant confirmed receiving this package. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package and evidence.

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?
- Is the Tenant entitled to recover the filing fee?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on May 1, 2018. Rent was currently established at an amount of \$575.00 per month, due on the first day of each month. A security deposit of \$265.00 was paid.

The Landlord stated that the Notice was served to the Tenant by being posted to his door on December 19, 2018 and the Tenant confirmed that he received the Notice that day. The reasons the Landlord served the Notice are because the "Tenant or a person permitted in the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord" and due to a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Notice indicated that the effective end date of the Notice was January 31, 2019.

The Tenant advised that he had been admitted to the hospital as he had broken a vertebra in his back; however, he cannot remember the date or specify a time as he has a brain injury. He stated that he had a fall in November 2018 and on December 21, 2018, that an ambulance had taken him to the hospital, and that he had been admitted for four nights. However, he could not remember when this occurred or what nights he spent in the hospital.

Both parties provided testimony with respect to the hospital stay and both parties came to the agreement that the Tenant had actually only spent one night in the hospital on December 21, 2018.

The Tenant stated that he has been immobile since his fall; however, the Landlord contrarily stated that he has observed the Tenant moving throughout the property.

The Tenant also stated that immediately after receiving the Notice, he consulted with a social worker.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on December 19, 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 Tenant received the Notice on December 19, 2018 by hand. 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 December 19, 2018, he must have made this Application by December 29, 2018; however, as this day was a Saturday, the Tenant would have had until Monday December 31, 2018 to dispute the Notice at the latest. However, the undisputed evidence is that the Tenant made his Application on January 15, 2019. 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 Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. While the Tenant attributed a back and brain injury as reasons for why he did not dispute the Notice in time, based on the consistent evidence of the Tenant being admitted to the hospital for one night on December 21, 2018, I do not find it reasonable that had the Tenant suffered such a significant injury, that he would have been discharged after one night. This causes me to question the reliability of the Tenant's testimony on this point.

Furthermore, the consistent evidence is that the Tenant was only hospitalized for one night, so that does not account for the other days that he could have disputed the Notice. As well, the Tenant advised that he contacted a social worker immediately after receiving the Notice. As such, it is not clear to me why he did not have this person he contacted, or another person, dispute the Notice on his behalf within the required time frame.

In addition, the Tenant has not provided any medical documentation to corroborate his injury, his medical history, or his hospital visits. As such, I find that the Tenant has

provided insufficient evidence that he had significant issues or exceptional circumstances that prevented him from disputing the Notice on time. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Ultimately, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession that is effective at **1:00 PM on March 31, 2019 after service of this Order** on the Tenant, as per the Landlord's request.

As the Tenant was unsuccessful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain \$100.00 from the security deposit, if he chooses to do so, in satisfaction of the debt outstanding.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on March 31, 2019 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed 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: February 26, 2019

Residential Tenancy Branch