



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT MT OLC

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- a request for more time to make an application to cancel the landlord's One Month Notice pursuant to section 66;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

The One Month Notice was served on the tenant by posting the notice on her door on December 5, 2018. Pursuant to sections 89 & 90 of the Act, I find the tenant to be deemed served with the Notice to End Tenancy three days later on December 8, 2018.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's One Month Notice pursuant to section 66?

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order for possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy started on September 1, 2017. The tenant paid rent of \$1,200.00 per month, due on the first day of each month. The tenant paid a \$600.00 security deposit.

The landlord testified that the tenant paid the rent late multiple times. Specifically, the landlord testified that the following rent payments were late:

- May 2018: tenant paid \$600.00 on May 1, 2018 and \$600.00 on May 4, 2018;
- July 2018: tenant paid \$1,200.00 on at 12:03 a.m. on July 2, 2018;
- October 2018: tenant paid \$1,200.00 on at 7:13 a.m. on October 2, 2018; and
- December 2018: tenant paid \$1,200.00 on at 1:15 a.m. on December 2, 2018.

The landlord provided e-transfer records evidencing the payments. The tenant did not dispute this rent payment history.

The tenant testified that the rent was paid late in May 2018 because she had to pay a large amount of work travelling expenses at the same time. The tenant testified that she texted the landlord requesting late payment for May. The tenant testified that the landlord did not respond. The tenant provided a copy of the text messages.

The landlord testified that she received the text message from the tenant but she did not respond because she did not have access to her telephone at the time and she was dealing with a family death.

The tenant acknowledged paying the July, October and December 2018 rents late. However, the tenant attempted to minimize the lateness by stating that the payments were only barely late. The tenant and the landlord both testified that they did not discuss the late payments until the One Month Notice was issued.

The parties both testified that in November 2018 the landlord discussed ending the tenancy so the landlord could move back into the rental unit. The tenant produced a text message from the landlord dated November 21, 2018 stating that the landlord wanted to move back into the rental unit.

The tenant testified that she told the landlord that she would vacate the rental unit. However, the tenant also stated that she was entitled to two month's notice and one month of rent compensation pursuant to the *Act*.

The landlord did not issue a two month notice. The landlord posted the One Month Notice on the tenant's door on December 5, 2018. The stated reason to end the tenancy on the One Month Notice was repeated late payment of rent.

The tenant argued that a two month notice would have been the appropriate notice and that the landlord only issued a one month notice to avoid her obligation of paying one month of compensation under the *Act*. The landlord argued that she had the right to file either the One Month Notice or a two month notice.

The tenant testified that, rather than immediately dispute the One Month Notice, she tried to find another tenancy in December 2018. The tenant testified that she had a verbal agreement to rent a new property. However, the tenant testified that she was unexpectedly rejected from the new property on December 7, 2018. The tenant testified that she attempted to find another suitable tenancy for her family but there were very few appropriate rental units available in Port Hardy.

The tenant testified that she was also delayed in filing an application for dispute resolution because she was very busy at work during the holidays. Furthermore, the tenant testified that she needed time to decide whether or not she would even remain in Port Hardy at all.

The tenant filed this application for dispute resolution on January 2, 2019.

Analysis

Pursuant to section 47(4) of the *Act*, a tenant has ten days after receipt of a notice to end a tenancy for cause to dispute the notice. Accordingly, the tenant had ten days after the effective date of service of December 8, 2018 to dispute the notice, in this case

being December 18, 2018. However, the tenant did not file her application for dispute resolution until January 2, 2019. This was after the expiration of the deadline.

The *Act* does permit the extension of this deadline in certain limited circumstances. Section 66(1) of the *Act* states that, "The director may extend a time limit established by this Act only in exceptional circumstances."

Residential Tenancy Policy Guideline No. 36 explains 'exceptional circumstances' as follows:

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 said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In applying this criteria to this matter, I do not find that exceptional circumstances existed to warrant extending the tenant's deadline to file a dispute under section 47. The primary explanation the tenant provided for not filing the application for dispute resolution earlier was that she had not decided to file the dispute until after the deadline had expired.

The tenant explained that she initially did not intend to file an application for dispute resolution because she had secured another tenancy anyway so she did not need to continue this tenancy. After this tenancy did not become available, the tenant testified that she attempted to find an alternate tenancy. The tenant also testified that, given the circumstances, she was not sure if she was going to stay in Port Hardy at all.

The tenant apparently changed her mind and decided to file this application for dispute resolution on January 2, 2019. However, *Residential Tenancy Policy Guideline No. 36* specifically states that a tenant's delay in filing occurring as a result of the changing his or her mind about filing an application for arbitration a change of the mind is not an exceptional circumstance.

The tenant also testified that she was delayed in filing because she was busy at work during the holidays. Absent emergency conditions, I do not find that being busy at work constitutes an exceptional circumstance within the meaning of section 66(1) of the *Act*.

I find that exceptional circumstances did not exist to extend the tenant's filing deadline. Accordingly, I find that the tenant did not timely file this application to cancel the landlord's One Month Notice.

Section 47(5) of the *Act* states that a tenant who does not timely file an application to dispute a notice to end tenancy for cause 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.

Since the tenant did not timely file this application to dispute the landlord's One Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being January 31, 2019. Accordingly, I deny the tenant's application to cancel the landlord's One Month Notice.

Section 55 of the *Act* states that when a tenant's application to cancel a notice to end tenancy for cause is dismissed, I must grant the landlord an order of possession if the landlord has issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective at 1:00 p.m. on February 28, 2019.

The tenant also made an application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62. The tenant argued that a two month notice was the appropriate notice which the landlord should have issued since the landlord wanted to move into the rental unit. Furthermore, the tenant argued that that the landlord would owe the tenant compensation of one month of rent under a two month notice.

However, there is no requirement under the *Act* that a landlord must issue the most appropriate type of notice to end tenancy. The landlord has chosen to issue a one month notice pursuant to section 47 of the *Act* and that notice has been upheld. It is irrelevant whether or not the landlord could have issued alternative notices. Accordingly, I dismiss the tenant's application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Since the tenant has not prevailed in this matter, I dismiss the tenant's request for reimbursement of the filing fee.

Conclusion

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on February 28, 2019**. 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.

I dismiss the tenant's application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

I dismiss the tenant's request for reimbursement of the filing fee.

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 20, 2019

Residential Tenancy Branch