



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, MT, CNC

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants, their son, the landlord's representative (the "landlord") and the property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties testified that they exchanged applications for dispute resolution in person on January 8, 2019. I find that the landlord and tenants were each served with the others' dispute resolution packages on January 8, 2019, in accordance with section 89 of the *Act*.

The landlord's application listed tenant F.E. and tenant H.S.; however, the tenants' application only listed tenant F.E. The tenants' son testified that both tenants were on the tenancy agreement. In accordance with section 64 of the *Act*, I amend the tenants' application to list both tenant F.E. and tenant H.S.

Issue(s) to be Decided

1. Are the tenants entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
3. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 46 and 55 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2014 and is currently ongoing. Monthly rent in the amount of \$1,251.26 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants to the landlord.

The landlord testified that on November 29, 2018 he left a copy of a One Month Notice to End Tenancy for Cause with an effective date of December 31, 2018, at the tenants' residence with an adult who apparently resides with the tenants. The landlord entered into evidence a witnessed proof of service document stating same and the property manager testified to the same.

The One Month Notice stated the following reasons for ending the tenancy: tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord testified that the tenants have rented out a room in the subject rental property without his permission on numerous occasions to different people who are not family.

The tenants' son testified that they have not rented out a room but that they do have family and friends from overseas come and stay with them. The tenants' son testified

that their family and friends do not pay rent but help out with the cost of such things as food and internet.

The tenants' son testified that on November 29, 2018 his parents were out of the country and his cousin was living at the subject rental property during their absence. The tenants' son testified that his cousin informed the tenants of the One Month Notice after he received it, but the tenants did not know on what date.

The tenants' son testified that the tenants returned to Canada on December 10, 2018. The tenants filed to dispute the One Month Notice on January 8, 2019. The tenants' testified that the tenants did not dispute the One Month Notice sooner because they were not familiar with the law and did not know what to do.

Analysis

Section 88(e) of the *Act* states that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways: (e) leaving a copy at the person's residence with an adult who apparently resides with the person.

As both parties agree that the person who was served with the One Month Notice was living at the subject rental property and was served at the subject rental property, I find that service of the One Month Notice was effected on the tenants on November 29, 2018, in accordance with section 88(e) of the *Act*.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

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.

Policy Guideline 36 states that an arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End Tenancy if that application for arbitration was filed after the effective date of the Notice to End Tenancy. For example, if a Notice to End Tenancy has an effective date of January 31, 2018 and the tenant applies to dispute said Notice on February 1, 2019, an arbitrator has no jurisdiction to hear the matter even where the tenant can establish grounds that there were exceptional circumstances. In other words, once the effective date of the Notice to End Tenancy has passed, there can be no extension of time to file for arbitration.

In this case, the tenants filed to dispute the One Month Notice after the effective date of that notice. Pursuant to Policy Guideline 36, I have no ability to extend the time limit to apply for arbitration. I therefore dismiss the tenants' application for more time to file to dispute the One Month Notice.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

In this case, the tenants did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the *Act*, the tenants' failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by December 31, 2018. As this has not occurred I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by 1:00 p.m. on February 28, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on February 28, 2019**, which should be served on the tenants.

Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$100.00. The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 14, 2019

Residential Tenancy Branch