



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

On January 3, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act") and seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*.

On January 4, 2019, the Tenant amended her Application seeking to add cancellation of the Notice pursuant to Section 47 of the *Act*.

The Tenant did not attend during the 14-minute conference call. M.F. and J.L. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

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?

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

Background and Evidence

The Landlord confirmed that the tenancy started on December 12, 2017. Rent was currently established at an amount of \$1,200.00 per month, due on the first day of each month. February 2019 rent was paid in full. A security deposit of \$600.00 was also paid.

The Landlord stated that the Notice was served to the Tenant by hand on December 20, 2018. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord”. In addition, the “Tenant or a person permitted on the property by the 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 jeopardize a lawful right or interest of another occupant or the landlord.” The Notice indicated that the effective end date of the Notice was January 31, 2019.

This hearing was scheduled to commence via teleconference at 9:30 AM on February 11, 2019.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:44 AM. Only the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference was a representative of the Landlord.

Analysis

With respect to the Notice served to the Tenant on December 20, 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 Landlord served the Notice on December 20, 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 20, 2018, the tenth day to dispute the Notice fell on Sunday December 30, 2018. As December 30, 2018 was a weekend, the Tenant must have made this Application by December 31, 2018 at the latest. However, the undisputed evidence is that the Tenant made her Application on January 3, 2019. As the Tenant was late in making this Application, she 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." However, the Tenant was not present to provide a reason why she did not dispute the Notice within the required timeframe.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's evidence would constitute exceptional circumstances. However, I find that there was insufficient evidence supporting that the Tenant had significant issues or exceptional circumstances that prevented her 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*.

As the Tenant has paid rent for February 2019, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on February 28, 2019.**

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on February 28, 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 11, 2019

Residential Tenancy Branch