



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated March 31, 2019 ("1 Month Notice"), for more time to make an application to dispute a 1 Month Notice, and to recover the cost of the filing fee.

The tenant, two agents for the landlord GL and PL ("agents") and the father-in-law for the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants and the parties were affirmed. The hearing process was explained to the parties.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the application was corrected to include "Bachelor Suite", which was missing from the tenant's application. In addition, the tenant had reversed the name of the landlord, which I also corrected pursuant to section 64(3) of the *Act*. I note that the tenant testified that he used the name for the landlord listed on the 1 Month Notice, which is incorrect, as the proper first name and the last name were not used by the tenant in the application, and which I corrected at the hearing.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Has the tenant provided sufficient evidence that they should be granted an extension of time under the *Act* to apply to cancel the 1 Month Notice?
- If so, should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agree that the tenancy began in November 2018, although the tenant originally stated December 2018, and later changed his testimony. The tenant claims that he was served on April 15, 2019, with the 1 Month Notice dated March 31, 2019 in person. Landlord agents GL and PL testified that the 1 Month Notice was served at 3:00 p.m. on March 31, 2019 at the rental unit and that the tenant accepted the paperwork on that date. The tenant did not dispute the 1 Month Notice until April 18, 2019 and has requested an extension of time to make an application to dispute the 1 Month Notice.

During the hearing, the tenant stated that the 1 Month Notice indicated that he had 14 days to dispute the 1 Month Notice. When the tenant was advised that the 1 Month Notice states that a tenant has 10 days to dispute a 1 Month Notice, the tenant then changed his testimony from 14 days to 10 days. In the tenant's application, he writes in part:

The reason why I am requesting more time is because the landlord gave me the notice at the beginning of the month saying that the form Is just a warning that it will not stand if there is no more complaints from the tenants upstairs. I told them that I don't smoke inside of the house and then on **april 14 they came to my house without a 24 hour notice and told me that the notice stands because there was more complaints from the tenants upstairs.**

[Emphasis added]

The tenant was asked why he applied for more time to make to file an application to dispute the 1 Month Notice if he received the 1 Month Notice on April 15, 2019, and applied three days later on April 18, 2019. The tenant started his response over three times before he eventually stated that he was verbally told at the beginning of the month that he would be evicted if complaints continued. The agents disagreed and stated that the tenant was served on March 31, 2019, which was witnessed by agent PL who was with RL when the tenant was served on March 31, 2019 at the rental unit.

Analysis

Based on the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first deal with the tenant's request for more time to make an application to dispute the 1 Month Notice. Firstly, I don't find the tenant to be credible as I note the following inconsistencies in their testimony:

1. The tenant testified the 1 Month Notice did not have the correct spelling of the landlord's name, which is incorrect.
2. The tenant testified that he was served on April 15, yet in his own evidence, wrote April 14 in his application.
3. The tenant claims the 1 Month Notice says 14 days to dispute when it clearly does not and does state 10 days and was submitted in evidence by the tenant.
4. The tenant claims that he was not served with the 1 Month Notice until April 15, yet writes "the landlord gave me the notice at the beginning of the month saying that the form is just a warning" and I find that using the word "form" supports a written notice and not a verbal warning.

Based on the above, I afford no weight to the tenant's testimony as I find it is inconsistent and contradictory. I find the testimony of the agents was consistent and detailed throughout the hearing and as a result, I afford the agents' testimony considerable weight.

Section 66 of the *Act* applies and states that a time limit may be extended for exceptional circumstances and Residential Tenancy Branch Policy Guideline #36 – Extending a Time Period, indicates that a party not knowing the applicable law or procedure is not a considered "exceptional" circumstances to justify an extension of time to make an application to cancel a Notice to End a Tenancy. I have carefully considered the reasons as claimed by the tenant and find that the tenant has provided insufficient evidence to support an exceptional circumstance under section 66 of the *Act*. Based on the above, **I dismiss** the tenant's request for an extension of time to make an application to cancel a Notice to End Tenancy due to insufficient evidence.

Section 47(4) of the *Act* states that the tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the 1 Month Notice. In the matter before me, the tenant testified that he did not receive the 1 Month Notice until April 15, 2019, which I do not accept. As noted above, I prefer the testimony of the agents that the tenant was served on March 31, 2019, with the 1 Month Notice, which also supports why the tenant

would have applied for more time to make an application to dispute the 1 Month Notice. Therefore, I find the deadline under section 47 of the *Act* to dispute the notice would have been April 10, 2019. The tenant did not apply until April 18, 2019. As a result, and in accordance with section 47(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on April 30, 2019, the effective vacancy date on the 1 Month Notice. Therefore, **I dismiss** the tenant's application in full without leave to reapply, as the tenant did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the *Act* and has provided insufficient evidence to support an extension of time to make an application to dispute the 1 Month Notice.

I do not find it necessary to consider the causes listed in the 1 Month Notice as a result as I have reviewed the 1 Month Notice and find that it complies with section 52 of the *Act* and is a valid notice. The parties agreed that the tenant paid money for use and occupancy of the rental unit until May 31, 2019. The parties also agreed that the tenant has not paid for use and occupancy for the month of June 2019. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[Emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective today, **May 31, 2019 at 1:00 p.m.** This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

I do not grant the tenant the recovery of the cost of the filing fee as the tenant's application has no merit.

I find the tenancy ended on April 30, 2019, which was the effective date listed on the 1 Month Notice.

Conclusion

The tenant's application is dismissed in full, without leave to reapply. The filing fee is not granted.

The tenancy ended on April 30, 2019.

The landlord has been granted an order of possession effective today, May 31, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 31, 2019

Residential Tenancy Branch