



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENNONITE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

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; and,
- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 66

Both parties attended the hearing and had 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 landlord testified that it issued and personally served the One Month Notice on February 28, 2019. The tenant acknowledged service of the notice.

Preliminary Matter: Name Correction

The landlord testified that the tenant's application stated the incomplete name for the landlord's legal entity. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's One Month 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 pursuant to section 55?

Background and Evidence

The landlord testified that this tenancy started approximately five years ago. The tenant paid monthly rent of \$375.00 and the landlord holds \$250.00 security deposit.

The landlord testified that the tenant has been storing excessive personal items in the rental unit. The landlord testified that the rental unit was extremely cluttered and it constituted a safety hazard. The landlord provided multiple photographs showing very cluttered conditions in the rental unit.

The landlord also testified that the tenant left food cooking on the stove unattended six times which was very dangerous with the extreme clutter in the rental unit. Further, the landlord testified that the tenant left personal items in common areas.

The landlord testified that they sent multiple letters to the tenant asking him to clean the rental unit but the tenant has not complied. The landlord is requesting an order of possession.

The tenant acknowledged that he received the One Month Notice on February 28, 2019 but he did not file this application to dispute the notice until March 29, 2019. The tenant testified that he did not apply earlier because he was confused and he did not know what to do. The tenant also testified that he had difficulty communicating in English. Furthermore, the tenant testified that he was receiving medical treatment from his family doctor.

The tenant explained that he was storing items which were for his children and his family. The tenant promised that he would be careful in the rental unit.

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. In this matter, the One Month Notice was personally served on the tenant by on February 28, 2019. Accordingly, the tenant had ten days after the date of service to dispute the notice, being March 10, 2019. However, the tenant did not file his application for dispute resolution until March 29, 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 he was confused, he did not know what to do and he had difficulty communicating in English. The tenant also testified that was receiving medical treatment from his family doctor.

I do not find the reasons provided by the tenant for failing to timely dispute the One Month Notice to be strong and compelling as required under *Residential Tenancy Policy Guideline No. 36*. As such, I am not satisfied that the tenant's explanation constituted an exceptional circumstance pursuant to section 66(1) of the *Act* and I dismiss the tenant's request for more time to file their application to cancel the landlord's One Month Notice.

Section 47(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are 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 tenants did not timely file this application to dispute the landlord's One Month Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being March 31, 2019. Accordingly, I deny the tenants' application to cancel the landlord's One Month Notice.

Section 55 of the *Act* states that a landlord is entitled to an order of possession if the tenants have not timely disputed the notice by making an application for dispute resolution. I find the form and content of the One Month Notice complies with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession. Since the landlord has already accepted the tenant's rent for May 2019, I grant the landlord an order of possession effective May 31, 2019.

Conclusion

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on May 31, 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.

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: May 14, 2019

Residential Tenancy Branch