



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPC, OPU
CNC, ERP, MNDCT, MT, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on April 3, 2019. The Landlord applied for an order of possession for cause, an order of possession for unpaid utilities, a monetary order for unpaid rent, and permission to retain the security deposit. The Tenant’s Application for Dispute Resolution was made on April 10, 2019. The Tenants applied to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 28, 2019, for more time to file to cancel a notice, for an order for the Landlord to make emergency repairs to the rental unit, for an Order for the Landlord comply with the Act. The Tenant also submitted an amendment to their application on May 3, 2019, adding a claim for a Monetary Order for compensation.

Both the Landlord and the Tenant and the Tenant’s Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Service

During the hearing, the Tenant testified that the Landlord had not served the Notice of Dispute Resolution Hearing documents to her. The Landlord testified that she agreed that she had not served the Notice of Dispute Resolution Hearing documents to the Tenant.

Section 71 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

Documents that must be served with the Notice of Dispute Resolution Proceeding Package

“The applicant must, within **three days** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].”

As the parties agreed that the Landlord did not serve the Tenant with the Notice of Dispute Resolution Hearing documents as required, I must dismiss the Landlord’s application, with leave to reapply.

I will proceed in this hearing in relation to the Tenant’s application.

Preliminary Matters – Amendment Request

At the outset of these proceedings, I reviewed the Tenant's application for amendment request. The Tenant testified that she had served the Landlord with the amendment to her application on May 10, 2019. Section 4.6 of the *Residential Tenancy Branch Rules of Procedure* states the following:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

I accept the Tenant's testimony that she had served her amendment request to the Landlord seven days before the hearing.

I find that the tenant failed to serve her application amended request in the allowable time limit permitted under *Rule of Procedure 4.6*. Consequently, the Tenant's application to add a monetary claim to these proceedings is dismissed with leave to reapply.

Preliminary Matters - Related Issues

I have reviewed the Tenant's application, and I note that she has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notices. As these other

matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to make emergency repairs to the rental unit, and for an Order for the Landlord to comply with the Act.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice and for more time to file an application to cancel a notice to end a tenancy.

Issues to be Decided

- Is the Tenant entitled to more time to file to cancel the Notice?
- Should the Notice issued on February 28, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2018, as a verbal month to month tenancy. Rent in the amount of \$800.00 is to be paid by the first day of each month, and the Landlord is holding a \$400.00 security deposit for this tenancy.

The parties also agreed that the Landlord served the Notice to end tenancy to the Tenant on February 28, 2019, by posting it to the front door of the rental unit. The Tenant submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - *Put the landlord's property at significant risk.*

The Notice states that the Tenant must move out of the rental unit by March 31, 2019. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the

Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had not disputed the Notice within the legislated timeline nor had the Tenant moved out in accordance with the Notice.

The Tenant agreed that she had not moved out in accordance with the Notice and that she had not disputed the Notice within the required timeline as she had not understood that she needed to dispute the Notice. The Tenant testified that she is now disputing the Notice and asking for more time to submit her application to dispute this Notice as she had not understood that she needed to apply earlier.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I find that the Tenant was deemed to have received the Notice to end the tenancy on March 3, 2019, three days after the Notice had been posted to the door of the rental unit. Pursuant to section 47(8) the *Act*, the Tenant had 10 days to dispute the Notice. Consequently, the Tenant had until March 13, 2019, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed to dispute the Notice on April 9, 2019, which is outside the statutory time limit.

The Tenant has also requested additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66 of the *Act* states that an extension of time may only be granted if the party requesting the extension has proven that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59

(3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

In this case, the Tenant testified that she did not dispute the Notice within the legislated timeline as she did not understand that she needed to dispute the Notice. I have reviewed the Notice to end tenancy submitted into evidence by the Tenant, and I noted that page two of the Notice clearly states that if the tenant does not dispute the Notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice. I find that the information advising the Tenant of how to dispute the notice and the consequences for not disputing the notice had been clearly provided to the Tenant.

I find that not understanding the information on page two of the Notice to be insufficient evidence of an exceptional circumstance under section 66 of the *Act*. Therefore, I find that the Tenant has failed to prove exceptional circumstance sufficient to be awarded additional time to file to dispute the Notice. Consequently, I dismiss the Tenant's request for more time to dispute the Notice, pursuant to section 66 of the *Act*.

As the Tenant failed in her application for more time to dispute the Notice, and the Tenant failed to dispute the Notice within the statutory time limit. I find that the Tenant is conclusively presumed to have excepted the Notice and that this tenancy would end in accordance with that Notice. Therefore, I dismiss the Tenant's application, and I find the Notice dated February 28, 2019, is valid and enforceable.

Section 55(1) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant's application to dispute the notice has been dismissed.

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.

As the Tenant's application to cancel the Notice has been dismissed, the Landlord is therefore entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I grant the Landlord an Order of Possession effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** 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: May 17, 2019

Residential Tenancy Branch