



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FFL
For the tenant: CNC MT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated March 15, 2019 (“1 Month Notice”). The tenant applied for more time to make and application to cancel a notice to end tenancy, and to cancel the 1 Month Notice.

Attending the teleconference hearing were the tenant, a tenant advocate (“advocate”), a support person for the tenant, an agent for the landlord (“agent”), two caretakers for the landlord, a manager for the landlord, a clerk for the landlord, and a witness GB (“witness”) for the landlord. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the agent, advocate and tenant gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence 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.

The parties confirmed that they received the documentary evidence and an application from the other party and that they had the opportunity to review the documents prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the advocate requested an adjournment for the purposes of two requests for records under the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”). The advocate stated that the two FOIPPA requests were related to records from a police department and emergency health services.

The criteria for granting an adjournment are set out in the Rules of Procedure (“Rules”). The criteria that apply are:

1. the views of the parties;
2. whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1. Rule 1 notes that the objectives of the Rules of Procedure are to secure a consistent, efficient and just process for resolving disputes;
3. whether the adjournment is required to provide a fair opportunity to be heard, including whether a party has sufficient notice of the hearing;
4. the degree in which the need for an adjournment arises out of the intentional actions or the neglect of a party seeking the adjournment; the possible prejudice to each party.

The agent vehemently denied the advocate’s request for an adjournment and testified that since the 1 Month Notice has been served, the tenant’s behaviour has become worse.

As a result of the above, I do not grant an adjournment for the following reasons:

1. This matter relates to an order of possession and is urgent as a result and I afford significant weight to the agent’s testimony that the tenant’s behaviour has been worse since being served with the 1 Month Notice.
2. Even if an adjournment was granted, which it is not, I find the timeline to submit documentary evidence has already passed and the documentary evidence would not be considered as a result under the Rules.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties 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

- Should the tenant be granted more time to make an application to dispute a notice to end tenancy under the *Act*?

- If yes, should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that the tenancy began on January 1, 2011. The parties agreed that monthly rent is due on the first day of each month.

Regarding the 1 Month Notice, the tenant confirmed receiving the 1 Month Notice posted to her door on March 16, 2019. The tenant disputed the 1 Month Notice on April 5, 2019. The effective vacancy date listed on the 1 Month Notice is April 30, 2019. The tenant continues to occupy the rental unit.

The landlord alleged three causes on the 1 Month Notice and when asked if the tenant had paid money for use and occupancy for May 2019, the agent stated “yes”. The agent later clarified that all but \$12.00 was paid for use and occupancy for May 2019.

The advocate stated that the tenant requires additional time to make an application to dispute the notice as the tenant has the following:

1. complex social anxiety disorder that prevents the tenant from leaving home,
2. diabetes which when there are complications leads to a loss of cognitive abilities,
3. depression,
4. learning disability,
5. blind in one eye,
6. mobility issues,
7. receiving disability benefit

The advocate was asked if the tenant had a computer and a phone in her rental unit. The advocate stated the tenant does not have a computer but did have a phone. The advocate testified that the tenant called the advocate within the required timeline to dispute the 1 Month Notice; however, the advocate confirmed that she could not recall a specific date when the tenant contacted the advocate. The advocate also did not explain why the advocate did not make an application on behalf of the tenant to dispute the 1 Month Notice during the required timeline under the *Act*. Instead, the advocate indicated that the tenant cancelled five meetings due to the seven items described

above. The advocate did not explain why the advocate could not obtain the required information by phone from the tenant versus having the tenant attend a meeting.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Request for More Time to Make Application to Dispute 1 Month Notice

Firstly, 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, states the following:

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

At no time during the hearing did the tenant or advocate claim that the tenant was in the hospital during all material times such as from the date the 1 Month Notice was received by the tenant on March 16, 2019 and the date the tenant disputed the 1 Month Notice on April 5, 2019. The only claim was that at some point the tenant was taken away by ambulance and no records were provided to support that, such as a hospital admission bracelet. I note that a hospital admission bracelet does not require an *FOIPPA* request and could have reasonably been provided by the tenant, which it was not.

I find that none of the seven items described above support exceptional circumstances as I find that on the balance of probabilities, the tenant called the advocate within the 10 day timeline provided under section 47 of the *Act* and yet no application was submitted by the tenant or advocate within the required timeline to dispute the 1 Month Notice. 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.

1 Month Notice – Pursuant to section 47 of the *Act*, if the tenant does not dispute the 1 Month Notice within 10 days of being served, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date listed on the 1 Month Notice which was April 30, 2019. As the tenant did not dispute the 1 Month Notice until April 5, 2019, which is ten days late as the tenant had until March 26, 2019 to file their, I dismiss the tenants' application to dispute the 1 Month Notice as the tenant filed outside of the allowable time limit and has provided insufficient evidence to support an extension of time to dispute a notice to end tenancy as indicated above. Therefore, the tenant's application is dismissed without leave to reapply as the tenant did not dispute the 1 Month Notice within the 10 day timeline provided under the *Act*.

I do not find it necessary to consider the merits of the causes listed on the 1 Month Notice as the tenant did not dispute the 1 Month Notice in accordance with section 47 of the *Act* and conclusive presumption applies. I find the tenancy ended on April 30, 2019, which was the effective vacancy date listed on the 1 Month Notice.

Landlord's application

Given the above, 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]

As a result of 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 **May 31, 2019 at 1:00 p.m.** as the tenant continues to occupy the rental unit the agent originally stated that the tenant has paid for use and occupancy for May 2019.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the \$100.00 filing fee pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act*, the landlord is granted a monetary order of **\$100.00** accordingly.

Conclusion

The tenant's application is dismissed in full without leave to reapply. The tenancy ended on April 30, 2019.

The landlord's application is successful. The landlord has been granted an order of possession effective May 31, 2019 at 1:00 p.m. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been granted a monetary order for the recovery of the cost of the \$100.00 filing fee pursuant to sections 67 and 72 of the *Act*.

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 8, 2019

Residential Tenancy Branch