



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA WOMENS RESOURCE
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT

Introduction

This hearing dealt with the tenants' 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"); and,
- more time to make an application to cancel the landlord's One Month Notice.

Tenant and the landlord's representative, R.P., attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party'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*.

Preliminary Matter: Name Correction

The landlord testified that the tenant's application stated the name for the landlord. I herein amend the tenant's application to state 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 Notice?

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 47 of the Act?

Is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

The tenancy started approximately nine years. The landlord issued and personally served the One Month Notice on March 28, 2019. The tenant acknowledged receipt of the notice.

The landlord checked the following as grounds for the Notice:

- 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 of the landlord.

The tenant filed her application to cancel the One Month Notice on April 18, 2019. The tenant testified that more time was needed to file the application because she was sick and because she had been moved to a temporary rental unit while her room was being remediated for water damage.

The tenant testified that she had been suffering from a medical illness for approximately one year and she was hospitalized from April 12 to 14, 2019. The tenant did not provide any hospital records to corroborate this testimony. The landlord disputed this. The landlord testified that the tenant may have received medical treatment in April but it would have been on an outpatient basis. The landlord testified the tenant resided at the rental unit continuously.

The landlord testified that the tenant assault another resident three times in February and March 2019. The tenant disputed these allegations and claimed that she was the victim of harassment.

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, I find that the One Month

Notice was personally served on the tenant on March 28, 2019. Accordingly, the tenant had ten days after the date of service on March 28, 2019 to dispute the notice, being April 10, 2019. However, the tenant did not file her application for dispute resolution until April 18, 2019 which was after the expiration of the filing 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 she had medical difficulties and that the tenant had been hospitalized for four days after the One Month Notice was issued.

Residential Tenancy Policy Guideline No. 36 does permit an extension when a tenant is in hospital at all material times. However, in this matter, the tenants' testimony indicates that she was not hospitalized until April 12, 2019 which is after the deadline had already expired on April 10, 2019. Accordingly, I find the hospitalization could not have delayed her response. Further, I find the tenant's explanations that she had a medical illness and that she had to move into a temporary rental unit to be strong and compelling reasons as required under *Residential Tenancy Policy Guideline No. 36* to merit an extension to file her application to cancel the One Month.

As such, I am not satisfied that the tenant's medical conditions and treatment constituted an exceptional circumstance pursuant to section 66(1) of the *Act* and I dismiss the tenant's request for more time to file her 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 tenant did not timely file this application to dispute the landlord's One Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being April 30, 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 effective within fourteen days of service of this order upon the tenant.

Conclusion

I find the landlord is entitled to an order of possession effective within fourteen days of service of this order upon 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 31, 2019

Residential Tenancy Branch