



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLOOM GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 18, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice for Cause; and
- a request for more time to cancel a One Month Notice for Cause.

The Tenant as well as the Landlord's Agent, N.B., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord in person on April 23, 2019. N.B. confirmed receipt. N.B. testified that she served the Tenant with the Landlord's documentary evidence by registered mail on May 13, 2019. The Tenant stated that she was unable to collect the Landlord's evidence from the Post Office as she had lost her identification. The Tenant stated that she requested a copy of the Landlord's evidence to be served to her in person instead. The Tenant confirmed receipt of this package served in person on May 18, 2019. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant requested an adjournment as she has had health issues which have resulted in her having difficulties collecting evidence in preparation

for this hearing. N.B. stated that she did not support an adjournment given the nature of the Application was to determine if the tenancy would continue or not.

The Residential Tenancy Branch Rules of Procedure 7.9 (the “Rule of Procedure”) guide the Arbitrator to consider the following when allowing or disallowing a party’s request for an adjournment; the oral or written submissions of the parties; the likelihood of the adjournment resulting in a resolution; the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; whether the adjournment is required to provide a fair opportunity for a party to be heard; and, the possible prejudice to each party.

I find that the Tenant provided insufficient evidence to support why she was unable to submit evidence between the time of her Application made on April 18, 2019 and the hearing date of May 31, 2019. Furthermore, I find that the Application is in relation to a One Month Notice to End Tenancy which has an effective date of April 30, 2019. As the effective date of the One Month Notice has past, an adjournment would further delay the end of the tenancy should I find that the Landlord had sufficient cause to end the tenancy. As such, the Tenant’s request for an adjournment is denied as it could pose a possible prejudice to the Landlord.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling One Month Notice Dated March 25, 2019, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to more time to allow the Application for Dispute Resolution, pursuant to Section 66 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on June 1, 2018. Currently, rent in the amount of \$375.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$187.50 which the Landlord continues to hold. Neither party submitted a copy of the tenancy agreement.

N.B. testified that the Landlord is seeking to end the tenancy as a result of several incidents which have taken place, involving the Tenant and the Tenant's guests.

N.B. testified that the on September 5, 2018 there was a report of a fire in the Tenant's rental unit which was caused by the Tenant's guest. Furthermore, there was bear spray released in the suite as well. The Tenant confirmed that the incident occurred; however deflected the responsibility to her guest as to having caused the incident.

N.B. stated that in March of 2019, Paramedics and Police attended the rental unit with guns drawn as the Tenant had overdosed on illicit substances and was acting erratically. The Tenant confirmed that she was taking medications and ate a cannabis cookie which caused her to experience extreme paranoia. N.B. stated that the Police removed the Tenant in handcuffs. The Tenant stated that the incident did not result in criminal charges.

Lastly, N.B. stated that in April 2019 the Tenant had another guest staying in her rental unit who had two Pitbull dogs who were observed lunging at other occupants in the building making them feel unsafe. Furthermore, the rental unit does not allow for pets. The Tenant stated that she was trying to help someone who had nowhere to stay for a couple days.

The Landlord wishes to end the tenancy for the above mentioned reasons. Accordingly, the Landlord issued the One Month Notice on the following bases:

“Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”

Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.”

N.B testified that she served the One Month Notice dated March 25, 2019 with an effective vacancy date of April 30, 2019 to the Tenant by registered mail on March 25, 2019.

In response, the Tenant stated that she lost her keys and therefore was unable to check her mail. The Tenant stated that she asked the Landlord for replacement keys near the end of March 2019. She was provided a new set of keys, however, the Landlord needed to make a new copy of the Tenant's mail key. In the meantime, the Landlord accommodated the Tenant's request to open her mailbox for her when needed. The Tenant stated that she received a copy of her mail key on April 10, 2019 at which point she learned that she had received her eviction notice.

The Landlord indicated that the Tenant has lost her keys on several occasions including September 2018, October 2018 and again in April of 2019.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated March 25, 2019 with an effective vacancy date of April 30, 2019, by registered mail on March 25, 2019. The Tenant testified that she lost her keys and was unable to check her mailbox until April 10, 2019 at which point she confirmed receipt of the One Month Notice. Pursuant to sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on March 30, 2019 the fifth day after the registered mailing.

Section 47(4) of the Act provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the Act confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, April 30, 2019.

The Tenant has applied for more time to file her Application. Pursuant to Section 66 of the Act, the director may extend a time limit established by the Act only in exceptional circumstances.

According to the Residential Tenancy Branch Policy Guideline 36 (the "Policy Guidelines"), 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.

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.

In this case the Tenant testified that she lost her keys which prevented her from checking her mail, resulting in her not receiving the One Month Notice until April 10, 2019. The Landlord submitted evidence to demonstrate that the Tenant had lost her key on three occasions in an eight month timespan. I accept N.B.'s testimony that she provided the Tenant access to the mailbox when requested.

I find that the Tenant provided insufficient evidence to support an exceptional circumstance preventing the Tenant from making an Application within the time limits set out in Section 47(4) of the *Act*. I find that it is the Tenant is responsible for maintaining care and possession of her keys. The fact that the Tenant has lost her keys three times in eight months demonstrates that she has a lack of care and attention for the control and access to her rental unit and mailbox. I further find that the Landlord provided the Tenant access to her mailbox when requested; therefore, the Tenant was not prevented from gathering her mail when needed. For these reasons, I dismiss the Tenant's Application for more time.

I find the Tenant was out of time to dispute the One Month Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, April 30, 2019.

Furthermore, in regard to the merits of the Landlord's Notice, I find the Landlord has sufficient cause to end this tenancy. I find the Tenant, or a guest allowed by the Tenant, caused a fire in the rental unit which seriously threatens the health and safety of other renters, and has significantly disturbed other renters in the building by having guests with dogs that caused fear. In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence by the parties, I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's Application to cancel the One Month Notice was submitted late and is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenant. The order should be served as soon as possible and may be filed in the Supreme Court and 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: June 4, 2019

Residential Tenancy Branch