



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOOK SIN TONG CHARITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, FFT

Introduction

On May 9, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act"), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by regular mail to the Landlord on May 14, 2019. When questioned why she served this by regular mail contrary to the *Act*, she then stated that she served it by registered mail; however, she did not have any tracking information to confirm service. She then contradictorily stated that she served the package by regular mail again, and then she stated that she also put a copy of the package under the Landlord's office door on May 29, 2019. The Landlord advised that he only received the Notice of Hearing package under the door, and this was received on June 7, 2019.

While I am not persuaded that the Tenant served the Notice of Hearing package in accordance with Section 89 of the *Act*, I am satisfied that the Landlord did receive the Notice of Hearing package, albeit late, and I elected to continue hearing the merits of the Application.

The Tenant advised that she did not serve her evidence to the Landlord. As such, her evidence could not be considered when rendering this decision. The Landlord advised that he served his evidence on June 11, 2019 by posting it on the Tenant's door and she confirmed receipt of this. He stated that he served this late as he only received the Notice of Hearing package on June 7, 2019. Even though service of this evidence did not comply with Rule 3.15 of the Rules of Procedure, the Landlord's evidence was accepted and considered in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to be granted more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant and Landlord agreed that the tenancy started on September 26, 2018. Rent was currently established at an amount of \$1,350.00 per month, due on the first day of each month. A security deposit of \$675.00 was paid.

The Landlord stated that the Notice was served to the Tenant by posting it on the Tenant's door on April 26, 2019. The Notice indicated that the effective end date of the Notice was May 27, 2019.

The Tenant advised that she was in the hospital on April 26, 2019 and was discharged on May 2, 2019. She advised that she received the Notice on this day; however, she stated that the reason she did not dispute the Notice on time was because she was really sick, she had been on antibiotics, and she had been bedridden for the entire month.

Analysis

With respect to the Notice served to the Tenant on April 26, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on April 26, 2019 by posting it to the Tenant's door. As per Section 90 of the *Act*, the Notice would have been

deemed received after three days of being posted to the door. As well, the Tenant acknowledged receiving the Notice on May 2, 2019. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that “*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 is 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.*” I find it important to note that this information is provided on the second page of the Notice as well.

As the Tenant was deemed to have received the Notice on April 29, 2019, the tenth day to dispute the Notice fell on Monday May 6, 2019. As such, the Tenant must have made this Application by this day at the latest. However, the undisputed evidence is that the Tenant made her Application on May 9, 2019. As the Tenant was late in making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented her from disputing the Notice within the required time frame, she stated that the reason was that she was ill and bedridden for the month of May. She advised that she personally went to dispute the Notice at a Service BC centre, but she could not explain how she was able to do this if she was truly bedridden the whole month. As well, other than her not being aware of this being a possibility, she did not provide a reason why she could not have had someone else make the Application to dispute the Notice for her if she was unable to herself. The Tenant did not submit any evidence to substantiate her condition or her inability to dispute the Notice within the required time frame.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. When reviewing the evidence and testimony before me, I do not find that the Tenant provided reasons for not disputing the Notice on time that may satisfactorily be considered exceptional. As such, I find that there was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented her from disputing the Notice on time. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenant has paid rent for June 2019, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on June 30, 2019.**

As the Tenant was not successful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on June 30, 2019** 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: June 13, 2019

Residential Tenancy Branch