



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNL, MNR, OLC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for landlord's use of property and the tenant applied for an order to set aside this notice and for more time to do so. The tenant also applied for multiple remedies which included an order directing the landlord to comply with the *Act*, carry out repairs, reduce rent and for a monetary order for compensation and the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord's counsel attended the hearing along with the landlord.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order and for an order directing the landlord to comply with the *Act*, make repairs and reduce rent. As these sections of the tenant's application are unrelated to the main section which is to cancel the two month notice to end tenancy for landlord's use of property, I dismiss these sections of the tenant's claim with leave to reapply.

Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy and for more time to do so.

Issue to be Decided

Is the tenant entitled to more time to dispute the notice to end tenancy? Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on August 10, 2016. The monthly rent is \$2,300.00 due on the first of each month. On April 01, 2019, the landlord served the tenant in person, with a two month notice to end tenancy for landlord's use of property.

Despite having received the notice on April 01, 2019, the tenant applied to dispute the notice on April 30, 2019. The tenant stated that she was looking to move out but had not found a place as of the date of this hearing (June 10, 2019).

The form and content of the notice was discussed, and the tenant agreed that she was served with a 2-page notice which clearly explained the legislated time lines to make an application to dispute the notice to end tenancy. The tenant stated that she was waiting to speak with her witness before she made application and that there were no dire circumstances that delayed her application.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for landlord's use of property on April 01, 2019. In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). The tenant did not apply to dispute the notice until April 30, 2019, a full 29 days after receiving the notice.

Section 49. 8(a) of the Act provides that tenants have 15 days in which to dispute a two month notice to end tenancy. Section 49.1(6) states that If a tenant who has received a notice under section 49 does not make an application for dispute resolution in accordance with subsection (8), 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.

In this case the tenant failed to make application to dispute the notice to end tenancy in a timely manner and has applied for more time to dispute the notice.

I am unable to grant the tenant more time to make her application without proof that exceptional circumstances prevented her from complying with the statutorily prescribed timeframe.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing for dispute resolution within the legislated time limit. Accordingly I am unable to grant the tenant an extension of time to make this application. The notice to end tenancy is upheld and the tenancy will end in accordance with the notice. The tenant's claim to set aside the notice is dismissed.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven her case, she must bear the cost of filing her own application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00pm on June 30, 2019.**

The remainder of the tenant's application is dismissed with leave to reapply.

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 10, 2019

Residential Tenancy Branch