



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- allow the tenant more time to make an application to cancel a notice to end tenancy pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant represented herself with the assistance of an advocate.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the tenant be allowed an extension of time to file their application?
Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began approximately 3 years ago. The currently monthly rent is \$590.00 payable by the 1st of each month. The rental unit is a suite in a multi-unit rental building.

The landlord issued a 1 Month Notice dated April 30, 2019 indicating the reason for this tenancy to end is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant testified that they received the 1 Month Notice on April 30, 2019 and filed their application for dispute resolution on May 21, 2019. The tenant explained that they were unable to file their application within the timeline set in the Act as they required assistance to understand the contents of the 1 Month Notice and to prepare and file an application. The tenant wrote in their application that, "I do not have the resources to file this myself and went into depression thinking I was being evicted. My mental health is being affected due to this eviction notice and I shut down and didn't know how to complete a dispute".

The landlord submitted into documentary evidence correspondence from other occupants of the building regarding the behaviour of the tenant and their guests, warning letters issued to the tenant, and text message conversations sent from the tenant's number. The landlord submits that the tenant and her guests have engaged in hostile interactions with other occupants, have been reported intoxicated and aggressive in common areas of the building and have refused to curtail or amend their behaviour throughout the tenancy. The landlord gave evidence about several recent incidents involving the tenant and her guests which led to the issuance of the 1 Month Notice.

The tenant disputes the landlord's characterization of recent events. The tenant testified that they were not intoxicated as reported by other occupants of the building. The tenant submits that they are not responsible for the presence of her guests in the rental building as she has not allowed them access after receiving notices from the landlord.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling." Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

The tenant submits that they were unable to file their application for dispute resolution within the timeline as they required assistance to comprehend the 1 Month Notice and then to file an application for dispute resolution. I find that the tenant has provided insufficient evidence in support of their application for an extension of time. The tenant has not provided independent documentary evidence in support of their submissions. I find that the tenant's submissions are more in the nature of excuses without compelling evidence. I find that the tenant has not met their evidentiary onus to show that there are exceptional circumstances to extend a time limit and consequently dismiss this portion of the tenant's application.

The tenant confirmed receipt of the 1 Month Notice on April 30, 2019. The tenant filed their application for dispute resolution on May 22, 2019, outside of the ten days provided under the *Act*. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, May 31, 2019.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I accept the evidence of the landlord that the tenant and people permitted on the property by the tenant have engaged in behaviour and conduct that has unreasonably disturbed other occupants and has caused significant interference. I find that the complaint letters from the other occupants to show that the tenant and her guests have caused disturbance. I do not find the tenant's characterization of their own behaviour to

be particularly convincing or with an air of truth. I find the landlord's evidence consisting of their testimony, complaints issued at the time of the alleged incidents and correspondence to be sufficient to show on a balance of probabilities that there is a basis for this tenancy to end.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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: July 5, 2019

Residential Tenancy Branch