



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 07, 2019 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated May 08, 2019 (the “Notice”). The Tenants applied for more time to file the Application.

The Tenants appeared at the hearing with the Advocates. The Agent appeared at the hearing for the Landlord with the Witness. The Witness was outside of the room until required.

I explained the hearing process to the parties who did not have questions in this regard. The parties provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenants be granted more time to file the Application?
2. Should the Notice be cancelled?

3. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. It is a month-to-month tenancy. Rent is \$790.00 per month due on the first day of each month.

The Tenants testified that the tenancy started November 15, 2018. The Agent did not know when the tenancy started.

The Notice was submitted as evidence. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of June 31, 2019. The grounds for the Notice are that the Tenants or a person permitted on the property by the Tenants have caused extraordinary damage to the unit or property.

The parties agreed both pages of the Notice were served on Tenant C.M. in person May 08, 2019.

The Tenants filed the Application June 07, 2019, outside the time for disputing the Notice.

The Tenants and Advocates submitted as follows in relation to the request for more time to file the dispute.

The Tenants tried to respond to the Notice but did not know how. The Tenants tried to file the dispute online but could not do so because they did not have a file number. The Tenants tried to find the file number which led them to Service BC. The Tenants also called the Advocates to assist. This all resulted in the passage of time. This amounts to exceptional circumstances because the Tenants were trying their best to get the necessary information to file the dispute. Tenant G.S. has had a stroke which makes it more difficult for Tenant C.M. to deal with things of this nature. When the Tenants initially received the Notice, they had a hard time taking it seriously because there was upheaval in the building and they thought the Notice was simply an effort to get tenants to smarten up. The Tenants did not take the Notice seriously. The Tenants did not understand why they received the Notice and were trying to figure out what to do.

The Tenants submitted written material in relation to the reason for disputing the Notice late which includes the following reasons. They were in a state of shock and confusion and thought the issue would go away because there is no extraordinary damage in the rental unit. The Tenants tried to “respond to the RTB over the internet” but were told they required a file number. There was no file number on the Notice. They were waiting for more information from the Landlord about the Notice. They phoned the RTB and spoke to someone who said they would “‘receive very specific information’ from the landlady about what was wrong”. A neighbour told them to go to an office in their city of residence, but they could not find an RTB office there. The Tenants then called the society for assistance.

The Advocates submitted a written letter which states the following about the request for more time. Tenant C.M. called the society on May 22, 2019 for assistance with the Notice. Tenant C.M. was baffled by the Notice and at a loss about what to do about it. He hoped it was a drastic warning or a “bad joke”. The Advocates advised the Tenants they should have contested the notice within five days of it being issued. The Tenants thought the Notice would be withdrawn. The Advocates looked into it and found there could be leniency with regards to the five-day time limit and are asking the arbitrator to consider the confusion of the Tenants who are not conversant with the *Residential Tenancy Act* (the “*Act*”) or the five-day time limit to dispute a notice and are not computer literate. Time passed as the Tenants tried to figure out what to do about the Notice.

The Tenants did not take issue with the form or content of the Notice other than the effective date of June 31, 2019, which does not exist.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. There is no issue that the Notice was served on Tenant C.M. in person May 08, 2019. Pursuant to section 47(4) of the *Act*, the Tenants had 10 days from receiving the Notice to dispute it. The Tenants had until May 21, 2019 to file the dispute given the dates involved. The Tenants filed the dispute June 07, 2019, 17 days late.

Section 66(1) of the *Act* allows an arbitrator to extend time limits in the *Act* “only in exceptional circumstances”.

Policy Guideline 36 deals with extending a time period and states in part:

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 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

[emphasis added]

I decline to extend the time to file the dispute for two reasons. First, none of the reasons provided for filing late amount to exceptional circumstances. Second, the Tenants did not submit sufficient evidence showing they took all reasonable steps to dispute the Notice in time.

In relation to the reasons provided for filing late, none of these amount to exceptional circumstances.

It is not sufficient to submit that the Tenants did not take the Notice seriously or thought it would be withdrawn. The Notice itself is clear about what would happen if the Tenants did not dispute the Notice. It states at the top, "You may be EVICTED if you do not respond to this Notice". I do not find it reasonable that the Tenants thought this was a "bad joke" or not something to be taken seriously. The Notice is a clear indication from the Landlord of their intention to evict the Tenants. The Tenants have not shown that there was any reasonable basis to believe the Notice was just a warning, a "bad joke", not to be taken seriously or going to be withdrawn. The Tenants cannot be excused from their obligations because they chose not to take the Notice seriously.

The Tenants indicate that they did not take the Notice seriously because there were no grounds for the Landlord to evict them. This is the very reason the Tenants should have disputed the Notice in time. It does not justify failing to dispute the Notice in time.

It is not sufficient to submit that the Tenants did not know what to do in relation to the Notice. The Notice itself states what the Tenants were to do on page two:

INFORMATION FOR TENANTS

You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice...If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

The Tenants did not need to know the *Act* or be computer literate to know their obligations in relation to disputing the Notice as it is stated on the Notice itself. The Notice is clear in this regard. If the Tenants read the Notice when they received it, and still did not know what to do in relation to the Notice, there were a number of options open to them. The Tenants could have called the RTB at the number provided on the first page of the Notice and asked for information about how to file a dispute. The Tenants could have contacted a friend or relative to assist them. The Tenants could have contacted an organization to assist them. The Tenants must have understood that this was an option for them as they did contact the society. However, the Tenants did so May 22, 2019, two weeks after receiving the Notice. The Tenants should have done so May 08, 2019, when they received the Notice and were unsure about what to do in relation to it. The Tenants have not provided a reasonable basis for not seeking assistance sooner.

I acknowledge that the Tenants state that they called the RTB; however, the response they say they received does not accord with them asking how to dispute the Notice. Nor is there any evidence before me showing the Tenants contacted the RTB and asked for information about disputing the Notice. In the circumstances, I am not satisfied they did.

As stated in Policy Guideline 36, not knowing the applicable law or procedure or not paying attention to the correct procedure is not an exceptional circumstance and does not justify failing to file a dispute on time.

Some of the submissions made are not clear to me. For example, the Notice is not required to have a file number on it. The Tenants would not have required a file number to file a dispute online as the file number is generated at the time the dispute is filed. The Landlord was not required to provide additional information other than what is stated in the Notice. The Notice contains all the information the Tenants required to file a dispute of the Notice.

The five-day time limit referred to by the Advocates in their written material is incorrect. As stated above and on the Notice itself, the Tenants had 10 days to dispute the Notice. Here, the Tenants actually had 13 days given the 10th day fell on a Saturday of a long weekend. In my view, 13 days was enough time to take the necessary steps to dispute the Notice if doing so was made a priority.

I also note that this is not a situation where the dispute was filed one or two days late. It was filed 17 days late, well outside the time limit for disputing the Notice.

As stated in Policy Guideline 36, exceptional circumstances are circumstances such as being in the hospital such that one could not have filed a dispute. The reasons for filing late provided here are not akin to being in the hospital.

As well, the Tenants have not submitted sufficient evidence showing they took reasonable steps to attempt to dispute the Notice immediately after receiving it. There is no evidence supporting that the Tenants called the RTB immediately to seek information or assistance. There is no evidence showing the Tenants sought assistance from other sources immediately. There is no evidence supporting that the Tenants tried to file the dispute online immediately.

In the circumstances, I am not satisfied there were exceptional circumstances that prevented the Tenants from filing the dispute on time. The request to extend the time limit for filing the Application is dismissed.

The remaining sections of section 47 state:

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find section 47(5) of the *Act* applies. The Tenants failed to dispute the Notice within 10 days of receiving it and therefore failed to dispute the Notice in accordance with section 47(4) of the *Act*. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and were required to vacate the rental unit.

The effective date of the Notice is June 31, 2019, a date that does not exist. Pursuant to section 53 of the *Act*, the effective date is automatically changed to comply with section 47(2) of the *Act*. The effective date is changed to June 30, 2019.

I have reviewed the Notice and find it complies with section 52 of the *Act*.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the Tenants' request for more time to file the dispute. I therefore dismiss the dispute of the Notice. I have found the Notice complies with section 52 of the *Act* in form and content. Therefore, pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession.

The Agent sought an Order of Possession effective 30 days from the date of this decision. Therefore, the Landlord is issued an Order of Possession effective at 1:00 p.m. on August 25, 2019.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on August 25, 2019. This Order must be served on the Tenants. If the Tenants do not comply with this Order, it 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 *Act*.

Dated: July 26, 2019

Residential Tenancy Branch