



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

On May 27, 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”) and seeking more time to cancel the Notice pursuant to Section 66 of the *Act*.

The Tenant attended the hearing with J.S., N.G., and E.S. attending as advocates for the Tenant. The Landlord attended the hearing with K.C. attending as agent for the Landlord. All in attendance provided a solemn affirmation.

J.S. advised that she served the Notice of Hearing package by hand to another manager at the Landlord’s office, and the Landlord confirmed that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

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?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.S. advised that she filed an Application for Dispute Resolution on May 16, 2019 to cancel the Notice; however, she made a clerical error which resulted in this Application being abandoned. She then stated that she subsequently reapplied for Dispute Resolution on May 27, 2019 to cancel the Notice, but she also made a request for an extension of time to make this Application as it was past the applicable timeframe to do so.

Analysis

With respect to the Notice served to the Tenant on or around May 9, 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 or around May 9, 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.

While J.S. may have made the original Application on May 16, 2019, the undisputed evidence is that the complete, accepted Application was made on May 27, 2019. As the Tenant was late in making this Application, he 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 him from disputing the Notice within the required time frame, J.S. advised that there was simply a clerical mistake that rendered the original Application invalid.

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 a compelling reason for not disputing the Notice on time that may satisfactorily be considered exceptional or unforeseen. As such, I find that there was insufficient evidence that this was a significant issue or exceptional circumstance that prevented him 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*. However, the Landlord allowed more time for the Tenant to vacate the rental unit. As such, 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 September 30, 2019**. As a note, the Tenant must still pay August and September 2019 rent in full.

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 September 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: July 16, 2019

Residential Tenancy Branch