



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
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 Tenant on June 21, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated May 28, 2019 (the “Notice”). The Tenant applied for more time to file the Application.

The Tenant appeared at the hearing late. J.C. and M.K. appeared at the hearing as agents for the Landlord.

The Tenant confirmed his full legal name and this is reflected in the style of cause. J.C. and M.K. confirmed the correct name of the Landlord and this is reflected in the style of cause.

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

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and 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 the relevant documentary evidence and all 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 Tenant 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

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2018 and was for a fixed term of six months. The parties agreed rent is \$1,050.62 per month due on the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by an agent for the Landlord. It has an effective date of June 30, 2019. The grounds for the Notice are that the Tenant is repeatedly late paying rent and has breached a material term of the tenancy agreement and failed to correct this within a reasonable time after written notice to do so. The Tenant did not take issue with the form or content of the Notice.

The agents for the Landlord testified that both pages of the Notice were posted to the door of the rental unit May 28, 2019. A Proof of Service was submitted showing this. The Tenant testified that he received the Notice around May 29, 2019 and agreed both pages were posted to the door of the rental unit.

The Tenant filed the Application June 21, 2019, outside the time for disputing the Notice.

The Tenant testified as follows in relation to why he filed the Application late. He was trying to resolve this with the Landlord which took time as the Landlord's agent was away. The Landlord's agent was not interested in resolving it, so the Tenant filed the Application. He tried to file the Application online but got confused. He is not good at paperwork. His girlfriend would usually have handled this, but she passed away last year. He did not ask for help with this because he was trying to work it out with the Landlord. He also had injured his wrist.

The agents for the Landlord did not make submissions on the issue of more time to file.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. Based on the testimony of the parties, I accept that the Tenant received the Notice May 29, 2019. Pursuant to section 47(4) of the *Act*, the Tenant had 10 days from receiving the Notice to dispute it. The Tenant had until June 10, 2019 to file the dispute given the dates involved. The Tenant filed the dispute June 21, 2019, 11 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 Tenant did not submit any evidence to support his testimony about why he filed the Application late.

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

It is not exceptional that the Tenant tried to resolve this issue with the Landlord. There is no reason this should have prevented the Tenant from filing the Application in time as he could have filed the Application and continued to discuss the matter with agents of the Landlord.

If the Tenant had trouble filing the Application online or completing the necessary paperwork, he should have sought assistance from someone. The Tenant did not provide a reasonable explanation for why he did not seek assistance. He said he was trying to work it out with the Landlord. Again, this is not a valid reason for failing to file the Application on time. The Tenant could have sought assistance, filed the Application in time and continued discussions with the Landlord about resolving this.

Having an injured wrist is not an exceptional circumstance. The Tenant did not explain how having an injured wrist affected his ability to file the Application on time. Again, if this hampered his ability to complete paperwork, he should have sought assistance. This reason is akin to stating that the party did not feel well which, as stated in Policy Guideline 36, is not an exceptional circumstance.

None of the reasons provided are akin to being in the hospital such that the Tenant could not have filed the Application in time.

The Notice is clear about what would happen if the Tenant did not dispute the Notice. It states at the top, "You may be EVICTED if you do not respond to this Notice". The second page of the Notice states:

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.

It is clear from the Notice itself that if the Tenant wanted to dispute the Notice, he needed to do this within 10 days. I do not accept that any of the reasons provided by the Tenant for filing the Application late prevented him from filing the Application in time.

I also note that the Tenant submitted no evidence in support of his testimony about why he filed the Application late. He did not submit any evidence of attempts made to resolve this issue with an agent for the Landlord. He did not submit any evidence that he attempted to file online but was unable to. He did not submit any evidence that he had injured himself. The Tenant has not provided any evidence to support the truthfulness of his testimony. Nor has the Tenant provided any evidence that he took all reasonable steps to dispute the Notice in time.

I also note that the Tenant did not file the Application one or two days late but 11 days late, well outside the time limit for doing so.

In these circumstances, the Tenant has failed to show that exceptional circumstances existed which resulted in him filing the Application late. 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 Tenant 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 Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and was required to vacate the rental unit.

The effective date of the Notice complies with section 47(2) of the *Act*.

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 Tenant's request for more time to file the Application. I have found the conclusive presumption set out in section 47(5) of the *Act* applies. 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 agents for the Landlord sought an Order of Possession effective September 30, 2019. The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2019.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2019. This Order must be served on the Tenant. If the Tenant does 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: August 09, 2019

Residential Tenancy Branch