



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for an extension of time to dispute the One Month Notice.

The Tenant and an advocate for the Tenant (the “Tenant”) were present for the teleconference hearing, as was the Landlord. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord clarified the spelling of her last name at the hearing. As this was different than the spelling of her name on the Application for Dispute Resolution, the Landlord’s name on the application was amended to the spelling as stated by the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the One Month Notice?

If so, should the One Month Notice be cancelled?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenancy began in 2002 and that current rent is \$950.00 due on the first day of each month. The Tenant was unsure as to whether a security deposit was paid while the Landlord stated that a security deposit in the amount of \$475.00 was paid at the start of the tenancy. The Landlord submitted a copy of a tenancy agreement signed for August 1, 2017 which confirms that rent in the amount of \$950.00 is due on the first day of each month.

The Landlord testified that the One Month Notice was served to the Tenant on June 1, 2019 by posting the notice on the Tenant's door. A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Tenant is repeatedly late paying rent

The effective end of tenancy date of the One Month Notice was stated as July 31, 2019.

The Tenant confirmed receipt of the One Month Notice on June 2, 2019. Although the Tenant signed the Application for Dispute Resolution on June 19, 2019, it was submitted to Service BC on June 28, 2019 which is therefore the date that the Tenant applied to dispute the One Month Notice.

The Tenant provided testimony that she was unaware of her rights to dispute the notice. After speaking with the advocate who was present at the hearing, the Tenant stated that she understood that she could dispute the notice and she started working on her dispute right away. The Tenant confirmed receipt of both pages of the One Month Notice but stated that she had not been aware that the notice contained information about the process for disputing the One Month Notice. The Tenant stated that this is the first time she has gone through this which is why she was unaware of the process. The Tenant has applied for an extension of time to dispute the One Month Notice.

The Landlord provided testimony that the One Month Notice was served due to repeated late payment of rent. She testified that in recent months the Tenant paid rent on December 18, 2018, January 7, 2019, February 25, 2019, and May 13, 2019. The Landlord also noted that a rent cheque dated March 1, 2019 was returned as non-sufficient funds and the rent for March 2019 was provided later in the month. The Landlord submitted banking information that shows the dates that the rent payments were made for the months in question.

The Landlord stated that the Tenant provides post dated cheques that she will deposit on the first of each month or a day or two after. However, she stated that the Tenant will often contact her and ask her not to deposit the cheque right away and advise her as to when the Landlord is able to deposit the cheque. The Landlord stated that she has does not have a choice as she would rather get the money than not receive anything or deal with cheques being returned as non-sufficient funds.

The Tenant was in agreement as to the months that rent was paid late as noted by the Landlord. However, the Tenant stated that she would always advise the Landlord to hold off on depositing the money and that the Landlord was accepting of this. Therefore, the Tenant stated that she did not think it was an issue. She stated that had she known it was an issue she would have tried to pay on time each month.

The Tenant also testified as to renovations she has completed in the rental unit and items she has purchased such as a fridge, washer and dryer. She stated that she purchased these items without notifying the Landlord so as not to bother her with issues she is able to resolve herself.

The Landlord stated that the Tenant has done some work in the rental unit to fix damage caused by the Tenant, such as replacement of damaged floors.

The Landlord stated that she is seeking an Order of Possession for the rental unit but understands that the Tenant will likely need more time to move. The Landlord stated that she is willing to provide the Tenant until November 30, 2019. The parties discussed settlement but were unable to come to an agreement.

The Tenant stated that since May 2019 she has made it a priority to pay rent on time.

Analysis

As the Landlord served the Tenant with a One Month Notice pursuant to Section 47(1)(b), I refer to Section 47(4) of the *Act* which states the following:

(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.

The Landlord served the One Month Notice on June 1, 2019 and the Tenant confirmed receipt of the notice on June 2, 2019. Therefore, I find that the Tenant had 10 days from June 2, 2019 to apply to dispute the notice. The Tenant applied on June 28, 2019, well beyond the 10 days allowable under the *Act*. However, in accordance with Section 66 of the *Act*, a time limit may be extended only in exceptional circumstances.

The Tenant applied for an extension of time and therefore I will consider whether there were exceptional circumstances present that did not allow the Tenant to file the application in time. *Residential Tenancy Policy Guideline 36* provides the following definition of 'exceptional':

The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

An example provided is that a party was in the hospital at all material times.

The following examples are provided in Policy Guideline 36 as to what may not be considered an 'exceptional circumstance':

- *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*

(emphasis added)

In this matter, I do not find any verbal or documentary evidence to establish that there were exceptional circumstances present that prevented the Tenant from applying on time. Instead, the Tenant stated that she was unaware that she was able to dispute the notice. During the hearing the Tenant confirmed receipt of both pages of the One Month

Notice. On page 2 of the notice, there is detailed information about a tenant's rights to dispute the notice within 10 days. As such, I do not grant the Tenant an extension of time to dispute the notice as I am not satisfied that there were exceptional circumstances that prevented her from doing so.

Therefore, as the Tenant did not dispute the One Month Notice within the 10 days allowable under Section 47(4) of the *Act*, I find that Section 47(5) of the *Act* applies as follows:

(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.

Accordingly, I dismiss that Tenant's application and find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. Upon review of the One Month Notice, I find that the form and content comply with the requirements of Section 52 of the *Act*, with the exception of the address which both parties agreed was incorrect.

However, I accept the testimony of both parties that the address changed during the tenancy and am satisfied that the Tenant knew the One Month Notice was for her and regarding her rental unit. The Tenant stated during the hearing that she was aware the One Month Notice was for her as it had her name on it and was posted on her door. As such, I accept that the address was an error on the part of the Landlord due to the address change and I find that the Tenant reasonably knew that this was an error and was in reference to her rental unit. Pursuant to Section 68(1) of the *Act*, I amend the One Month Notice to the correct address as I find it reasonable to do so.

Therefore, pursuant to Section 55 of the *Act*, I award the Landlord an Order of Possession. Although the notice was effective July 31, 2019, I accept the testimony of the Landlord that she is willing to provide the Tenant until November 30, 2019 and therefore the Order of Possession is effective at 1:00 pm on November 30, 2019.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **November 30, 2019 at 1:00 pm**. This Order must be served 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: August 21, 2019

Residential Tenancy Branch