



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAMELE'AWT QWEESOME & TO'O HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

The tenant, his care aid, the landlord's tenant relations coordinator and tenant administrator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Date Application Made

The tenant testified that he originally made his application to cancel the One Month Notice to End Tenancy for Cause on July 3, 2019; however, he did not include all documents/information required for the fee waiver application. The tenant testified that he was contacted by the Residential Tenancy Branch on July 9, 2019 and informed that he had three days to provide the required information. The tenant testified that he submitted a brand-new application to dispute the One Month Notice for Cause on July 11, 2019 and included the correct fee waiver documentation/information in the new application.

The landlord testified that the One Month Notice was posted on the tenant's door on June 24, 2019. The tenant testified that he received the One Month Notice on June 24, 2019.

During the hearing I informed the parties that since the tenant's original application was made within 10 days of the tenant's receipt of the One Month Notice for Cause, the tenant's application was made in accordance with the statutory timeline for disputing a One Month Notice.

Residential Tenancy Rule of Procedure 2.6 states that the Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

Upon further consideration of the above Rule of Procedure, I revoke my oral finding provided in the hearing that the tenant's application was made on time. I find that the tenant's application for dispute resolution was not completed until July 11, 2019 and the Residential Tenancy Branch's direction to provide the missing fee waiver information by July 12, 2019 was not an extension of the statutory timelines for making an application to cancel the One Month Notice to End Tenancy for Cause.

Preliminary Issue- More Time to Make Application

Section 47 of the *Act* states that 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.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

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.

The tenant testified that he did not file his application in time because he is a quadriplegic. The tenant did not enter into evidence any medical documentation stating

that his disability rendered him unable to file his application for dispute resolution pursuant to the timelines set out in the *Act*. The tenant relation coordinator confirmed that the tenant is a quadriplegic but testified that he was in and out of the subject rental property in the 10 days following service of the One Month Notice and that his disability did not render him unable to file his application in accordance with the timelines set out in the *Act*. The landlord entered into evidence a record of the tenant's fob activity to show that he was in and out of the subject rental property during the 10 days after service of the One Month Notice.

Pursuant to section 66 of the *Act* and Policy Guideline 36, I find that the tenant has not provided persuasive evidence to support his testimony that his disability prevented him from filing his application on time. I therefore dismiss the tenant's application for more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2019 and is currently ongoing. The tenant's portion of monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on June 24, 2019 a One Month Notice to End Tenancy for Cause with an effective date of July 31, 2019 (the "One Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on June 24, 2019.

The One Month Notice stated the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

The tenant relations coordinator testified that the tenant allowed guests into the subject rental property who stole another tenant's bicycle, contrary to section 322(1)(a) of the Criminal Code of Canada. The above testimony was not disputed by the tenant.

The tenant relations coordinator testified that the tenant deals drugs out of the subject rental property contrary to section 354 of the Criminal Code of Canada. The tenant testified that he does not deal drugs.

The tenant relations coordinator testified that the tenant's guests conducted a drug deal in the hallway of the subject rental building the day after the tenant moved in, contrary to section 354 of the Criminal Code of Canada. A video of the drug deal was entered into evidence. The tenant testified that he didn't know his guests were going to do a drug deal.

Analysis

Section 47(4) and (5) of the *Act* state that 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.

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:

- (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.

Pursuant to section 47(5)(a) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the One Month Notice, that being July 31, 2019. Pursuant to section 47(5)(b) of the *Act*, I find that the tenant was required to move out of the subject rental building by July 31, 2019. As that has not

occurred, I find that the landlord is entitled to an Order of Possession, effective September 30, 2019.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2019**, which should 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: September 16, 2019

Residential Tenancy Branch