



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MT, OLC, RP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 12, 2019, (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated June 27, 2019 (the "One Month Notice");
- a request for more time to cancel a Notice;
- an order to suspend or restrict the landlord's right to enter;
- an order for the landlord to comply with the Act, tenancy agreement or regulation; and
- an order for regular repairs

The Tenant, the Tenant's translator M.M, as well as the Landlord, and the Landlord's agent T.W. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application package to the Landlord in person on July 13, 2019. The Tenant stated that she served her documentary evidence package to the Landlord in person on August 22, 2019. The Landlord confirmed receipt of both packages. The Landlord testified that she served the Tenant with her documentary evidence by registered mail on July 25, 2019. The Tenant denied that she received any of the Landlord's documentary evidence. The Landlord provided the registered tracking information at the time of the hearing which confirmed that the package was delivered at the dispute address on August 13, 2019. Pursuant to section

88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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 is compliant with the *Act*.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice for Cause.

The Tenants' request for an order to suspend or restrict the landlord's right to enter, an order for the landlord to comply with the *Act*, tenancy agreement or regulation, and an order for regular repairs are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling One Month Notice dated June 27, 2019, pursuant to Section 47 of the *Act*?
2. Are the Tenants entitled to more time to allow the Application for Dispute Resolution, pursuant to Section 66 of the *Act*?
3. If the Tenants are unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2016. Currently, the Tenants pay rent in the amount of \$786.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 which the Landlord continues to hold. The Tenants have paid rent in full for the month of September 2019.

The Landlord testified that the Tenants have been repeatedly late paying rent. They testified that the Tenants were late paying rent in August, October, November, and December 2018, as well as in January, February, March and June 2019. The Landlord stated that she served the Tenants with a 10 Day Notice for unpaid rent after each late payment of rent. The Landlord stated that she subsequently served the Tenants in person on June 27, 2019 with a One Month Notice for Cause dated June 27, 2019 with an effective vacancy date of July 31, 2019. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

The Tenant confirmed receiving the One Month Notice in person on June 27, 2019. The Tenant has applied for more time to dispute the One Month Notice on July 12, 2019, as English is not her first language and that she was unaware of the time frames to submit an application to cancel the notice pursuant to the *Act*.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the *Act*, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

In this case, the parties agreed the Tenants are required to pay rent in the amount of \$786.00 to the Landlord on the first day of each month.

The Landlord served the Tenants with a One Month Notice to End Tenancy for Cause in person on June 27, 2019, with an effective vacancy date of July 31, 2019. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

Section 47(4) of the *Act* provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, July 31, 2019.

In this case, I find the Tenants received the One Month Notice on June 27, 2019. After receiving the One Month Notice, I find the Tenants had until July 7, 2019 to submit an Application for dispute resolution or accept that the tenancy will end on July 31, 2019.

The Tenants did not dispute the One Month Notice until July 12, 2019. I find that the Application was made outside of the 10 days permitted under Section 47(4) of the *Act*.

The Tenants have applied for more time to file his Application. Pursuant to Section 66 of the *Act*, the director may extend a time limit established by the *Act* only in exceptional circumstances.

The Tenant indicated that English is not her first language and that she was unaware of the time limits set out under the *Act*.

I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenants from making an Application within the time limits set out in Section 47(4) of the *Act*. I find that the Tenants were able to make the Application before me today, however, these steps should have been made prior to the 10 Days permitted under the Act had elapsed. For these reasons I dismiss the Tenants' Application for more time.

I find the Tenants were out of time to dispute the One Month Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, July 31, 2019.

Furthermore, I am satisfied that the landlord's Notice to End tenancy had merit due to the number of times the Tenants were late paying rent. Therefore, I find the Tenants were repeatedly late paying rent. In light of the above, I dismiss the Tenants' Application to cancel the One Month Notice dated June 27, 2019, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective at 1:00 P.M. on September 30, 2019 after service on the Tenants.

Conclusion

The Tenants were out of time to dispute the One Month Notice and are conclusively presumed to have accepted the tenancy ended. I also find the One Month Notice had merit as the Tenants were repeatedly late paying rent. The Tenants have paid rent for September and therefore, pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be effective at 1:00 P.M. on September 30, 2019 after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in 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 05, 2019

Residential Tenancy Branch