



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, via teleconference, was held on September 27, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1-Month Notice to End Tenancy (the Notice); and,
- more time to make an application to cancel the Notice.

The Landlord and both Tenants attended the hearing (as well as their advocate). All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Tenants be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenants have applied for more time to make an application to cancel the Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenants stated that they received the Notice on June 25, 2019. The Tenants also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

- Tenant is repeatedly late paying rent

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. As the Tenants received the Notice on June 25, 2019, they had until July 5, 2019, to dispute the Notice.

After reviewing the file, I note that the Tenants' application was not made until July 29, 2019. In this case, the Tenants did not apply within the allowable 10 day window. In fact, they were over 3 weeks late in filing their application.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

After reviewing the file before me, I note that on the Tenants application they stated that they have their rent paid directly by the Government, through social services. On the Tenants' application, they also stated that there was personal hardship due to one of the Tenant's daughters being sexually assaulted. However, during the hearing, the Tenants did not speak to or mention any details regarding what happened with the sexual assault, when it occurred, and why it would have prevented *both* of the Tenants from filing an application within the normal timeline of 10 days. I note both Tenants stated they are single parents. Even if one of them was dealing with some exceptional personal issues, it is unclear why the other person would not have been able to file the application in time. In any event, the Tenants barely spoke to the issue of why they needed extra time, during the hearing.

I do not find the Tenants have sufficiently demonstrated that their circumstances were exceptional, such that it warrants extra time to file an application for review, especially for a period of 3 weeks or more.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed in its entirety.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the

Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after service on the Tenants.

Since the Tenants were not successful with their application, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: September 27, 2019

Residential Tenancy Branch