



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA COOL AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, CNC, MT, PSF

Introduction

On October 3, 2019 the Tenant submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause dated August 21, 2019 (the "One Month Notice");
- an order granting more time to cancel a Notice to End Tenancy;
- an order that the Landlord provide a service or facility; and
- an order that the Landlord allow access to the Tenant or guest.

The Tenant as well as the Landlord's Agents attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served the Landlord in person with his Application and documentary evidence package on October 18, 2019. The Landlord's Agents acknowledged receipt. The Landlord's Agents stated that they served the Tenant with the Landlord's documentary evidence on October 23, 2019 which was confirmed by the Tenant.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 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 Residential Tenancy Branch 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 and Procedural 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 in relation to the One Month Notice dated August 21, 2019.

The Tenant's request for an order that the Landlord allow access to the Tenant or their guest, as well as an order that the Landlord provide a service or facility are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to more time to allow the Application for Dispute Resolution, pursuant to Section 66 of the Act?
2. Is the Tenant entitled to an order cancelling One Month Notice, pursuant to Section 47 of the Act?
3. If the Tenant is 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 February 1, 2017. Currently, the Tenant pays rent in the amount of \$375.00. The Tenant paid a security deposit in the amount of \$375.00 which the Landlord continues to hold.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the following bases:

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

"Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park."

The Landlord's Agents testified that they served the One Month Notice dated August 21, 2019 with an effective vacancy date of September 30, 2019 to the Tenant on August 21, 2019 by posting it to the Tenant's door. The Tenant confirmed receiving the One Month Notice on August 21, 2019.

The Landlord's Agents testified the One Month Notice was served to the Tenant in relation to several areas of concern;

The Landlord's Agents stated that the Tenant has cause extraordinary damage to his rental unit. The Landlord's Agents stated that all the walls in the Tenant's rental unit are severely damaged with big holes and missing drywall. The Landlord submitted photographic evidence in support.

The Landlord's Agents stated that the Tenant has been aggressive and threatening towards other occupants as well as staff at the rental property. The Landlord's Agents stated that the Tenant has been seen kicking the elevator door when he is frustrated with the elevator taking too long. Furthermore, the Landlord's Agents stated that the Tenant has been seen carrying weapons, such as pry bars, baseball bats and paddles, which he uses to threaten others with.

Lastly, the Landlord's Agents stated that the Tenant has been cautioned on several occasions about throwing items from the top floor down into common areas which can be very dangerous for other occupants who live or may be walking below. The Landlord submitted occurrences reports and well as caution notices in support.

In response, the Tenant acknowledged that he has caused some damage to the walls in his rental unit. The Tenant also deflected responsibility to some guests that may have been staying in his rental unit at the time.

The Tenant also acknowledged carrying weapons for his own protection. The Tenant acknowledged that he has thrown some items from his balcony. The Tenant stated that he is quiet and doesn't feel as though his tenancy should end as a result of his actions.

Analysis

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

The Landlord served the One Month Notice by posting it to the Tenant's door on August 21, 2019. The Tenant confirmed receipt on the same date. I find the One Month Notice dated August 21, 2019 was sufficiently served for the purposes 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, September 30, 2019.

In this case, I accept that the Tenant confirmed receipt of the One Month Notice on August 21, 2019. As such, I find the Tenant had until August 31, 2019 to submit an Application for dispute resolution or accept that the tenancy will end on September 30, 2019.

The Tenant did not dispute the One Month Notice until October 3, 2019. I find that the Application was made outside of the 10 days permitted under Section 47(4) of the *Act*.

The Tenant has 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 Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

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 the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

During the hearing, the Tenant did not testify to or submit any documentary evidence that would support an extension of time to submit the Application. I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenant from making an Application within the time limits set out in Section 47(4) of the *Act*. For this reason, I dismiss the Tenant's Application for more time.

I find the Tenant was 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, September 30, 2019.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice, 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 grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence by the Landlord, I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective at 1:00 P.M. on October 31, 2019 after service on the Tenant.

Conclusion

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 October 31, 2019 after service on the Tenant. If the tenant fails 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: October 29, 2019

Residential Tenancy Branch