



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT LRE RP

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause dated July 25, 2019 (the "July One Month Notice") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Service of Tenant's Evidence

The landlord objected to the late service of the tenant's evidence. The landlord and tenant both agreed that the tenant delivered her evidence to the landlord 13 days before the hearing.

The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.3 establishes that the applicant's evidence intended to be relied on at the hearing must be received by the applicant not less than 14 days before the hearing. I find that the tenant did not serve

her evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

Residential Tenancy Branch Rules of Procedure, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this matter, I find that the landlord was not prejudiced by the late delivery of the tenant's evidence. The landlord still had 13 days to review the tenant's evidence and prepare for the hearing. Furthermore, I find that the acceptance of the tenant's evidence after being served one day late does not breach the principles of natural justice.

Accordingly, I will admit the tenant's evidence even though it was served late.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the July One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the July One Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the July One Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the July One Month Notice and recovery of the filing fee for this application.

Preliminary Matter: Request to Amend Application To Dispute A New One Month Notice

At the hearing, the tenant testified that the landlord served another One Month Notice to End Tenancy for Cause dated September 25, 2019 (the “September One Month Notice”).

The landlord testified that he sent the September One Month Notice to the tenant by registered mail on September 25, 2019. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. I asked both parties if they objected to the checking of the tracking number on the Canada Post website during the hearing. Both parties consented to checking the tracking information on the Canada Post website. I went to the Canada Post website during the hearing and the Canada Post website indicated that the document was picked up on September 27, 2019 at 2:14 p.m. with signature confirmation. The tenant acknowledged receiving the notice on September 27, 2019. I find that the September One Month Notice was on the tenant on September 27, 2019 pursuant to section 88 and 90 of the *Act*.

At the hearing the tenant requested an amendment to her Application for Dispute Resolution to dispute the September One Month Notice. Residential Tenancy Branch *Rules of Procedure* Rule 4.2 provides

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.”
(Residential Tenancy Branch *Rules of Procedure* Rule 4.2)

In this matter, I find that it could be reasonably anticipated that, when the tenant is disputing a notice to end tenancy, she would also dispute any further notices to end tenancy served subsequent to the commencement of her dispute. Accordingly, I grant the tenant’s request to amend her application pursuant to Residential Tenancy Branch *Rules of Procedure* Rule 4.2 to also dispute the September One Month Notice.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's July One Month Notice pursuant to section 47?

Is the tenant entitled to cancellation of the landlord's September One Month Notice to pursuant to section 47?

Is the landlord entitled to an order of possession pursuant to section 55 of the Act?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties testified that the tenancy commenced in 2012. The tenancy agreement did not state the date of the month when rent payments were due. The landlord testified that the rent payments were due on the first day of each month. However, the tenant testified that rent was due any time before the fifth day of each month.

The landlord complained that the tenant was repeatedly late paying rent and the landlord issued the July One Month Notice on July 25, 2019. The landlord testified that the rent was late for May 2019, June 2019 and July 2019. The landlord provided his bank statements to show the dates the rent payments were received.

The tenant testified that the rent was only late in May 2019 and that was because the tenant specifically withheld the rent until repair requests were addressed.

The landlord sent the September One Month Notice on September 25, 2019 and, as stated above, the tenant received the September One Month Notice on September 27, 2019. The tenant requested an amendment to dispute the September One Month Notice at the hearing on October 8, 2019. The tenant testified that she did request an amendment earlier because she believed that the ten day deadline was calculated on the basis of business days and not calendar day.

I advised both that they may submit a copy of the September One Month Notice until 4:00 p.m. on October 8, 2019. The landlord provided a copy of the notice before the 4:00 p.m. deadline and I considered that notice in rendering this decision.

The tenant submitted a copy of a tenancy agreement after the hearing. I did not consider this document in rendering this decision because I advised both parties in the hearing that I was only permitted the submission of the September One Month Notice after the hearing. This was not an opportunity to submit additional evidence.

Analysis

Pursuant to section 47(4) of the *Act*, a tenant has ten days after receipt of a notice to end a tenancy for cause to dispute the notice. As stated above, I find that the tenant was served the September One Month Notice on September 27, 2019. Accordingly, the tenant had ten days after the effective date of service of September 27, 2019, to dispute the notice, being October 7, 2019. However, the tenant did not dispute this notice until she requested an amendment to her current application for dispute resolution at the date of the hearing on October 8, 2019. This was after the expiration of the deadline.

The *Act* does permit the extension of this deadline in certain limited circumstances. Section 66(1) of the *Act* states that, "The director may extend a time limit established by this Act only in exceptional circumstances."

Residential Tenancy Policy Guideline No. 36 explains 'exceptional circumstances' as follows:

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.

Some examples of what might not be considered "exceptional" circumstances include:

- 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

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In applying this criteria to this matter, I do not find that exceptional circumstances existed to warrant extending the tenant's deadline to file a dispute under section 47. The primary explanation the tenant provided for not filing the application for dispute resolution earlier was that she had misunderstood the filing deadline and she believed that the ten day deadline applied to business days and not calendar days. However, the instructions on second page of the notice to end tenancy specifically states that the tenant has the right to dispute the notice within 10 days of receiving it. The instructions do not state that this deadline is calculated on the basis of business days instead of calendar days.

In addition, the tenant claimed that she was relying on the instruction of Residential Tenancy staff who she claims advised her that she could amend her application but she should not file a new application while her currently application was pending. However, the tenant did not provide any explanation as to why she was unable to submit an amendment to dispute the September One Month Notice within ten days of being served.

Furthermore, the policy guidelines specifically states that not knowing the applicable law or procedure is an example of what may not be considered an exceptional circumstance.

I find that exceptional circumstances did not exist to extend the tenant's filing deadline. Accordingly, I find that the tenant did not timely file this application to cancel the landlord's One Month Notice.

Since the tenant did not timely file this application to dispute the landlord's September One Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ends on the effective date of the notice, being October 31, 2019. Accordingly, I deny the tenant's application to cancel the landlord's One Month Notice.

Section 55 of the *Act* states that when a tenant's application to cancel a notice to end tenancy for cause is dismissed, I must grant the landlord an order of possession if the landlord has issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession at 1:00 p.m. on October 31, 2019.

Since this tenancy is not continuing, the tenant's application to cancel the July One Month Notice is moot.

I dismiss her application for reimbursement of the filing fee pursuant to section 72 since the tenant did not prevail in her application.

Conclusion

The tenant's application to dismiss the landlord's notice to end tenancy is dismissed without leave to reapply.

The tenant's application for reimbursement of the filing fee is dismissed without leave to reapply.

I dismiss all the tenant's claims with leave to reapply except for the tenant's application for the cancellation of the notice to end tenancy and the tenant's application for the recovery of the filing fee for this application.

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on October 31, 2019**. This order must be served on the tenant. If the tenant fails 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: October 08, 2019

Residential Tenancy Branch