



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, MT, CNC, LRE, RP, FFL

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On August 21, 2019, the Landlord applied for an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause dated August 6, 2019. The Landlord also applied for money owed or compensation for damage or loss; to keep a security deposit; and to recover the cost of the filing fee.

On August 27, 2019, the Tenant applied for more time to dispute a notice to end tenancy and to cancel a One Month Notice to End Tenancy For Cause dated August 6, 2019. The Tenant also applied for money owed or compensation for damage or loss; for an order for the Landlord to make repairs and to suspend or set conditions on the Landlords right to enter the rental unit.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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.

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 primary issue to be determined is whether or not the tenancy is ending based on the issuance of a One Month Notice to End Tenancy for Cause dated August 6, 2019. The Landlords and Tenants other claims are dismissed with leave to reapply.

Issues to be Decided

- Should the Tenant be permitted more time to make an application to cancel the One Month Notice to End Tenancy for Cause?
- Does the Landlord have sufficient cause to end the tenancy?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on December 1, 2018 on a month to month basis. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlords a security deposit of \$600.00.

The Landlord testified that the Tenants were served with a One Month Notice to End Tenancy dated August 6, 2019 ("the One Month Notice"). The reason for ending the tenancy provided within the One Month Notice is:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice.

If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Tenant testified that she received the One Month Notice posted to her door on August 6, 2019. The Tenant disputed the One Month Notice on August 27, 2019, and is seeking more time to dispute the One Month Notice.

I find that the Tenant had until August 16th to dispute the One Month Notice. The Tenant disputed the One Month Notice eleven days late.

The Tenant was invited to provide reasons why she did not dispute the One Month Notice within 10 days of receiving it.

The Tenant testified that she was assaulted by a neighbor on August 6, 2019, and had a concussion. She testified that her neighbors physically attacked her while she was retrieving her dog from their yard. She testified that she went to the clinic the following day. She testified that she suffered bruises and a bump on her head and had difficulty concentrating and did not want to drive. The Tenant also testified that she has an anxiety disorder.

The Tenant provided documentary evidence consisting of four prescription slips from a health clinic. Three of the Doctor's notes are dated on August 22, 2019, and beyond, which is after the Tenant was assaulted and after she received the One Month Notice to End Tenancy for Cause. None of the Doctors notes mention that the Tenant sustained injuries from an assault or was recovering from concussion symptoms. A Doctors note dated September 12, 2019, indicates that the Tenant suffers from generalized anxiety and panic and that stress worsens her anxiety and can reduce her level of functioning.

The Landlords counsel submitted that the Tenant received a notice to end tenancy from the Landlord a few months prior and disputed the Notice and is therefore aware that a notice to end tenancy must be disputed within certain time period. The Landlords counsel was opposed to the Tenant being permitted more time to dispute the One Month Notice.

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Residential Tenancy Policy Guideline # 36 provides information to determine what qualifies as exceptional circumstances:

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.

I have considered the policy guideline and the Tenant's explanations for why she made a late application to dispute the One Month Notice. I find the Tenant failed to provide any medical evidence to substantiate her testimony that she was suffering from concussion symptoms to a degree which prevented her from disputing the Notice within the required time.

While I accept that the Tenant suffers from an anxiety disorder, the Tenant did not provide any compelling explanation on how her anxiety prevented her from disputing the One Month Notice for 21 days after receiving it.

While I accept that the Tenant was upset and anxious after being involved in a physical altercation involving a neighbor and another occupant of the rental property on August 6, 2019, I find that the Tenant had 10 days afterwards to dispute the Notice Online, or to arrange for someone to dispute the Notice in person at a Service BC location. I find that the Tenant's explanation for the late dispute of the One Month Notice Tenant does not amount to an exceptional circumstance. The One Month Notice provides clear information on the time limits and the conclusive presumption that the tenancy ends if the Notice is not disputed within 10 days.

After considering the evidence before me, I dismiss the Tenant's request for more time to make an application to dispute the One Month Notice. The Tenant's Application to cancel the one Month Notice to End Tenancy for Landlord's Use of Property dated August 6, 2019 is dismissed.

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 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice issued by the Landlord complies with the requirements for form and content. The Landlord is entitled to an order of possession effective at 1:00 PM on October 31, 2019, after service on the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution. I authorize the Landlord to withhold \$100.00 from the security deposit.

Conclusion

The Tenant's application for more time to dispute a notice to end tenancy is not successful. The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated August 6, 2019 is dismissed.

The Landlord is granted an order of possession effective October 31, 2019 after service on the Tenant.

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 28, 2019

Residential Tenancy Branch