



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 11, 2019 (the "Application"). The Tenant applied for more time to extend the time limit established by the *Residential Tenancy Act* (the "Act") to make an Application for dispute resolution to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated September 17, 2019 (the "One Month Notice"), pursuant to the *Act*.

The Landlord, the Tenant, the Tenant's advocate M.B., and the Tenant's Representative J.C. attended the hearing at the above noted date and time and provided affirmed testimony.

M.B. stated that she served the Tenant's Application and documentary evidence package to the Landlord by registered mail on October 15, 2019. The Landlord's Agent confirmed receipt. The Landlord's Agent testified that he served the Tenant with the Landlord's documentary evidence in person on October 24, 2019. The Tenant confirmed receipt. 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 Residential Tenancy Branch Rules of Procedure (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*.

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 15, 2019. Rent in the amount of \$375.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$187.50 which the Landlord currently holds. The Landlord submitted a copy of the tenancy agreement in support.

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

“Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”

The Landlord’s Agent stated that he served the One Month Notice with an effective vacancy date of October 31, 2019, by posting it to the Tenant’s door on September 17, 2019. The Tenant confirmed he received the One Month Notice on September 18, 2019, and submitted his Application to dispute the One Month Notice on October 11, 2019.

The Tenant has applied for more time to cancel the One Month Notice. During the hearing, M.B. stated that the Tenant suffers from anxiety which prevented him from submitting his Application on time. M.B. referred to a letter the Tenant had obtained in support. M.B. stated that the letter had not been submitted into evidence for my consideration.

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 in person on September 17, 2019, by posting it to the Tenant's door on the same date. The Tenant confirmed receipt on September 18, 2019. Accordingly, I find the One Month Notice 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.

In this case, I find the Tenant received the One Month Notice on September 18, 2019. I find the Tenant had until September 28, 2019 to submit an Application for dispute resolution or accept that the tenancy will end on October 31, 2019 as indicated on the One Month Notice.

The Tenant did not dispute the One Month Notice until October 11, 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.

Section 36 of the Residential Tenancy Branch Policy Guidelines (the "Policy Guidelines") outlines 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.

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.

During the hearing M.B. outlined that the Tenant suffers from anxiety which prevented him from submitting his Application within the time limit set out by the *Act*. 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*.

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.

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 parties, I find it complies with section 52 of the *Act*.

As the effective date of the One Month Notice has already passed and that the parties confirmed that the Tenant has paid rent for the month of November 2019, I grant the Landlord an order of possession, which will be effective on November 30, 2019 at 1:00 P.M. after service on the Tenant.

Conclusion

The Tenant is out of time to submit his Application to cancel the One Month Notice and is conclusively presumed to have accepted the end of the tenancy. Pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be effective on November 30, 2019 at 1:00 P.M. 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: November 18, 2019

Residential Tenancy Branch