



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 24, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Two Month Notice") dated August 20, 2019; and
- an order granting more time to cancel the Two Month Notice.

The Tenant, the Tenant's representative A.K., and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served the Application package to the Landlord in person shortly after submitting the Application. The Landlord confirmed receipt. The Landlord stated that she served the Tenant with her documentary evidence by registered mail on November 8, 2019. The Tenant confirmed receipt. Accordingly, pursuant to Sections 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 the 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 an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to more time to cancel the Two Month Notice, pursuant to Section 66 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2016, that currently rent in the amount of \$466.00 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$600.00 was paid to the Landlord.

The Landlord testified that she served the Tenant with the Two Month Notice on August 20, 2019 with an effective vacancy date of October 31, 2019 by posting it to the Tenant's door. The Tenant confirmed having received the Two Month Notice on August 20, 2019. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"The tenant no longer qualifies for the subsidized unit."

The Landlord stated that the Tenant resides in a subsidized family complex in which it is a requirement of the tenancy that the Tenant have a child residing in her rental unit. The Landlord stated that the Tenant's son had been removed from the rental unit and has not resided with the Tenant for over one year now.

The Landlord stated that she spoke to the Tenant's Social Worker in August of 2019 at which point it was determined that there is no foreseeable plan for the Tenant's child to return to her care. The Landlord is seeking to end the tenancy as the Tenant has not qualified for subsidized housing for over a year.

In response, A.K. stated that the Tenant is going through a difficult time and was unable to submit her Application in time as she was unaware what to do and was afraid to lose

her housing. A.K. stated that he persuaded the Tenant to submit her Application regardless.

The Tenant stated that she was aware of the requirement that in order to qualify for subsidized housing, the Tenant needs to have her child residing with her. The Tenant stated that her child was removed from her care which was outside of her control. The Tenant stated that her son will be returning home in three months as he is residing with his grandparents currently.

Analysis

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

Section 49.1 of the Act states;

(2) a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Landlord served the Tenant with the Two Month Notice on August 20, 2019 by posting it to the Tenant's door. The Tenant confirmed having received the Two Month Notice on August 20, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

After receiving the Two Month Notice on August 20, 2019, the Tenant had 15 days to dispute the Two Month Notice. As such, I find that the Tenant had until September 4, 2019 to either dispute the Two Month Notice or else is conclusively presumed to have accepted that the tenancy ends on the effective date of the Two Month Notice.

The Tenant has applied for more time to cancel the Two Month Notice. Section 66(1) of the Act states that the director may extend a time limit established by this Act only in exceptional circumstances.

According to the Residential Tenancy Policy Guideline 36;

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.

In this case, A.K. stated that the Tenant is going through a difficult time and was unable to submit her Application in time as she was unaware what to do and was afraid to lose her housing. A.K. stated that he persuaded the Tenant to submit the Application regardless. I find that the Tenant provided insufficient evidence to demonstrate that she was unable to submit her Application within the time limits set out by the Act. While the Tenant may have been going through a difficult time, I find that this does not constitute an extenuating circumstance.

As I have found that the Two Month Notice was served to the Tenant on August 20, 2019 and that there is no evidence before me to demonstrate that the Tenant was unable to submit her Application for Dispute Resolution within 15 days due to an extenuating circumstance, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy.

In light of the above, I dismiss the Tenant's Application to dispute Two Month Notice dated August 20, 2019 without leave to reapply.

Furthermore, I find that the Landlord has provided sufficient evidence to show that the Tenant no longer qualifies for subsidized family housing.

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 Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on December 31, 2019 at 1:00 P.M. after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I accept the evidence of the Landlord that the Tenant no longer qualifies for subsidized family housing, therefore, I do not find that the notice should be cancelled. Furthermore, the Tenant filed her Application late. Therefore, the Tenant's Application seeking cancellation of the Two Month Notice dated August 20, 2019 is dismissed without leave to reapply. The Landlord is granted an order of possession effective December 31, 2019 at 1:00 P.M., after service on the Tenant. The order should be served to the Tenant as soon as possible and may be filed in the Supreme Court and 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: December 02, 2019

Residential Tenancy Branch