



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, RP, FFT

Introduction

On October 22, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with L.H. attending as an advocate for the Tenant. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by registered mail on October 22, 2019 and the Landlord confirmed that he received this package. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord as it was his belief that the Residential Tenancy Branch would do so for him. As this evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, this evidence was excluded and not considered when rendering this decision.

The Landlord advised that he served his evidence to the Tenant in person with a witness on November 4, 2019; however, he did not provide proof of service of this package. The Tenant denied receiving this evidence. While I am skeptical that the Tenant did not receive this evidence, the Landlord has not provided any proof of service. As such, I have excluded the Landlord’s evidence and will not consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2008 and rent was currently established at an amount of \$1,013.00 per month, due on the first day of each month. A security deposit of \$360.00 was paid.

The Landlord stated that the Notice was served to the Tenant in person on October 10, 2019 and he submitted a signed proof of service document confirming this. The Tenant

acknowledged that he received the Notice, but he was not sure of the date. The Notice indicated that the effective end date of the tenancy was November 30, 2019.

The Tenant advised that the reason he did not dispute the Notice on time was because he had not received a Notice before, he did not know what to do, and he did not understand that he was required to dispute the Notice within a specific period of time. He provided no other reason why he required more time to dispute the Notice. L.H. stated that there were no details of cause listed on the Notice, that the Tenant was not aware of the reasons for the Notice, and that the Notice should therefore be invalid.

Analysis

With respect to the Notice served to the Tenant, I am satisfied based on the Landlord's proof of service that this Notice was served to the Tenant on October 10, 2019. Furthermore, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Despite no details of cause being written on the Notice, I am satisfied that the Landlord checked off reasons for service of the Notice. As such, I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on October 10, 2019 by hand to the Tenant. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."* I find it important to note that this information is provided on the second page of the Notice as well.

As the Tenant was served the Notice on October 10, 2019, the tenth day to dispute the Notice fell on Sunday October 20, 2019. As such, the Tenant must have made this Application by Monday October 21, 2019 at the latest. However, the undisputed evidence is that the Tenant made his Application on October 22, 2019. As the Tenant was late in making this Application, he requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice "only in exceptional circumstances." When the Tenant was questioned if there were any exceptional circumstances that prevented him from

disputing the Notice within the required time frame, his only reason was that he was unaware that he was required to do so within the required time frame.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. When reviewing the evidence and testimony before me, I do not find that the Tenant provided a reason for not disputing the Notice on time that may satisfactorily be considered exceptional. As such, I find that there was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented him from disputing the Notice on time.

While L.H. argued that the Notice was not valid because the details of cause were not outlined on the Notice, the Tenant acknowledged that the only reason he did not dispute the Notice is because he did not know that he was required to within a specific period of time. From this, I can reasonably infer that the Tenant did not even read the Notice. Therefore, I am satisfied that the validity of the Notice was not even a consideration to the Tenant as a reason not to dispute the Notice.

Consequently, as I am satisfied that the Landlord checked off reasons for service of the Notice, that the Notice is valid pursuant to Section 52 of the *Act*, and that the Tenant provided no persuasive reasons why the Notice was not disputed within the required time frame, I find that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenant has paid rent for December 2019, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on December 31, 2019**.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on December 31, 2019** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed 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: December 11, 2019

Residential Tenancy Branch