



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

On December 2, 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”) and seeking more time to cancel the Notice pursuant to Section 66 of the *Act*.

The Tenant attended the hearing and D.B. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served two Notice of Hearing packages by hand to D.B. on December 2, 2019 and she confirmed that these were received. Based on this undisputed evidence and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing packages.

Both the Tenant and D.B. advised that they did not submit any evidence for consideration on this file.

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 be granted 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?

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.

Both parties agreed that the tenancy started on September 15, 2019. Rent was currently established at an amount of \$745.00 per month, due on the first day of each month. A security deposit of \$372.50 was also paid.

D.B. advised that the Notice was served to the Tenant by hand on November 19, 2019 and the Tenant confirmed that he received the Notice on this date. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord’s property at significant risk.” The Notice indicated that the effective end date of the tenancy was December 19, 2019.

The Tenant advised that he went to dispute the Notice on November 29, 2019; however, he did not realize that he was required to pay an Application fee or provide documentation indicating that he qualified for a fee waiver. As a result, he then returned to file his Application on December 2, 2019 when he had the appropriate documents.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on November 19, 2019, 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 the incorrect dispute address listed on the Notice by the Landlord, as the Tenant acknowledged that this Notice pertained to his tenancy in the rental unit, 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 November 19, 2019 in person. 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 November 19, 2019, the tenth day to dispute the Notice fell on Friday November 29, 2019. As such, the Tenant must have made this Application by this day at the latest. However, the undisputed evidence is that the Tenant made his Application on December 2, 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, he stated that the reason was due to him being unaware that payment for the Application was required, or that fee waiver documents were necessary if he could not pay the Application fee.

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 any reasons 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. Ultimately, I am satisfied 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 January 2020, 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 January 31, 2020**.

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 January 31, 2020** 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: January 21, 2020

Residential Tenancy Branch