



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Portland Hotel Society - Woodward's Community
Housing and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

The tenant made the Application for Dispute Resolution on January 8, 2020 seeking more time to apply to dispute a Notice to End Tenancy and an order to cancel the One Month Notice to End Tenancy for Cause (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on March 6, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution on January 13, 2020, the date on which they signed for receipt of the registered mail delivery.

Prior to the hearing, the landlord provided 22 pages of documentary evidence and security camera footage and individual photo prints. In the hearing the tenant confirmed receipt of this same evidence.

Issue(s) to be Decided

Is the tenant entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit of time in which to do so as prescribed by the *Act*?

Is the tenant entitled to an order that the Respondent cancel or withdraw the One Month Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord and tenant both agree that there is a tenancy agreement in place, signed by the landlord and tenant on August 7, 2018, for the tenancy that started on August 1, 2018. The rent amount is \$375.00, payable on the first day of each month.

The landlord issued the One Month Notice on December 5, 2019, posted on the tenant's door, with the effective date for the tenant to move out being January 31, 2020. The landlords indicated the following reasons on page 2:

- 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.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlords also provided a photograph to show both pages of the One Month Notice posted on the door of the rental unit.

Concerning the reason for the One Month Notice, the landlord presented that there were several letters to the tenant regarding guests to the building, and an ongoing conflict with another tenant in a different area of the building. There is documentary evidence of other tenants' complaints, and fire bylaw violations.

The tenant filed an Application for Dispute Resolution (the "Application") on January 8, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One Month Notice").

The tenant also requested more time to file the Application after the dispute period indicated on the One Month Notice. The dispute period expired on December 22, 2019.

The tenant addressed their request to file a late Application in this matter by presenting a letter from their family physician. The letter presents the following:

- The tenant “struggles with a number of very serious chronic illnesses . . . which have not been well controlled in recent months.”
- They have a very hard time maintaining appointments, “navigating the system and advocating for himself”
- This “significantly contributed to his ability to apply for review of his housing status in a timely fashion”.

The landlord stated that the tenant paid rent for the unit – which is a non-profit housing community services society – for the month of March 2020.

Analysis

In regard to the tenant’s request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that exceptional circumstances for the tenant are not proven in both the documentary evidence submitted, and the oral testimony.

The tenant did not show that exceptional specific circumstances were in place during the 10-day dispute period that expired on December 22, 2019. I appreciate the tenant bears the burden of illnesses which impair their ability to keep appointments; however, the evidence does not show this condition was exacerbated or especially problematic during the time period in question.

Moreover, the evidence presented by the landlord shows a number of notices to the tenant prior to the landlord serving the One Month Notice. From this evidence I find the tenant was aware of the issues surrounding the tenancy, with no evidence to the contrary. The tenant spoke to these incidents that occurred over the last year and did

not give an indication that they did not know about the One Month Notice posted on their door on December 5, 2019.

Also, the physician's letter was written on March 5, 2020, the day before the hearing. The advocate who assisted the tenant during the hearing read the content of this letter in the hearing and sent the letter into this office on the same day. There was no indication or statement by the tenant on why the doctor wrote this letter at this later time immediately prior to the hearing, some three months after the landlord served the One Month Notice. As such, the letter does not present circumstances on what occurred specifically with the tenant within the dispute period, during the time frame in question.

This One Month Notice was served on December 5, 2019. The tenant failed to apply for dispute resolution within the specified time limit of 10 days after they received it. Furthermore, and as noted above I have found the tenant is not entitled to more time to dispute the One Month Notice. On this basis, I find the tenant is conclusively presumed under sections 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the 10 Day Notice: January 31, 2020. As such, the tenant must vacate the rental unit.

For these reasons, I dismiss the tenant's application to cancel the One Month Notice. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied 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 complies with the requirements of form and content. The landlords are entitled to an order of possession on the effective date within the One Month Notice; however, the landlords agreed to give the tenant additional time to find another accommodation.

Conclusion

I grant an Order of Possession to the landlords effective no later than March 31, 2020, after service on the tenant. The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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 *Act*.

Dated: March 26, 2020

Residential Tenancy Branch