



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL-4M

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 4 Month Notice Tenancy (the 4 Month Notice) pursuant to section 66;
- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties attended the hearing via conference call and provided testimony that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 9, 2020. The landlord provided undisputed testimony that the tenant was served with the submitted documentary evidence.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset, both parties confirmed that ownership of the rental property changed and that the new landlord is A.R. instead of the originally named, B.D. Both parties confirmed and accepted an amendment naming the new landlord as A.R. As such, the Residential Tenancy Branch File and any subsequent documents shall be amended to reflect the new named landlord.

The tenant's request for more time to make an application was addressed. The tenant provided written details which state,

I have been involved in treatment for cancer and have not had the ability to get out to an advocate to file. I do not have a computer or have email so assistance to file for dispute resolution.

[reproduced as written]

The tenant confirmed that the notice to end tenancy was received on November 26, 2019 posted to the rental unit door and that the application for dispute was filed on January 6, 2020. A review of the notice to end tenancy shows that the effective end of tenancy date is March 31, 2019. The tenant clarified that he was recovering from a cancer operation.

The landlord had no issues with tenant's request.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, "*36. Extending a Time Period*" provides me with guidance as to the interpretation of section 66:

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 strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party

putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

In this case, the tenant’s request was due to medical treatment and the landlord made no issues with the request. On this basis, I find that as the landlord had no issue and the tenant’s request was based upon a medical treatment that the tenant’s request for more time is granted. The hearing shall proceed on the tenant’s request to cancel the 4 month notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with the 4 month notice to end tenancy issued for demolition, renovation, repair or conversion of a rental unit (the 4 month notice) dated November 25, 2019 by posting it to the rental unit door on November 26, 2019. The 4 month notice sets out an effective end of tenancy date of March 31, 2020 and reason selected as:

Perform renovations or repairs that are so extensive that the rental unit must be vacant, 10.00 weeks.

The notice indicates that no permits and approvals are required by law to do this work.

Planned work

Details of work

Bathroom renovation

- removing the bathtub and all surrounding drywall, upgrade the shower diverter and p-trap.*
- installing new bathtub and surrounding drywall work followed by shower tiles.*
- This work will render the bathroom non-functional for a minimum of several weeks.*

The applicant states that the landlord is not acting in good faith: no permits or agreements have been presented, and the work required does not need tenant to leave.

Analysis and Conclusion

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on April 30, 2020 at 5pm, by which time the tenant will have vacated the rental unit.

The landlord agreed to withdraw the 4 Month Notice to End Tenancy dated November 25, 2019.

The tenant agreed to cancel the application for dispute.

Both parties agreed that no rent was to be paid for April 2020.

The landlord agreed to pay \$3,000.00 to the tenant, which includes the \$200.00 security deposit paid by the tenant at the beginning of the tenancy. Payment of the \$3,000.00 will be in two parts. The first \$1,500.00 payment will be sent to the tenant via Canada Post Registered Mail on March 10, 2020. The second and final payment of \$1,500.00 will be made to the tenant in person no later than 5pm on April 30, 2020.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenant fails to vacate the rental premises in accordance with their agreement by 5:00 pm on April 30, 2020. The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenant does not vacate the premises by the time

and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary order in the tenant favour in the amount of \$3,000.00. I deliver this Order to the tenant in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement. The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 09, 2020

Residential Tenancy Branch