



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agency
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

The tenant made the Application for Dispute Resolution on February 7, 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 19, 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 March 4, 2020. A representative for the applicant hand-delivered the Application for Dispute Resolution and Notice of Dispute Resolution Proceeding to the landlord office. Neither party served evidence on the other.

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 section 66 of the *Act*?

Is the tenant entitled to an order that the Respondent cancel the One Month Notice pursuant to section 47 of the *Act*?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55 of the *Act*?

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 did not provide documentary evidence for this hearing. The tenant provided a single document for consideration: a guideline to Persons with Disabilities assistance. The hearing proceeded with both parties providing oral testimony to address the issues at hand.

The landlord and tenant both agree that there is a tenancy agreement in place, with the tenancy started on July 1, 2005. The rent amount as of May 1, 2019 is \$868.00, payable on the first day of each month. Each month the rent amount is removed from the tenant's Persons with Disabilities cheque.

The landlord issued the One Month Notice on January 24, 2020, posted on the tenant's door, with the effective date for the tenant to move out being February 29, 2020. The landlord gave oral testimony regarding the reasons for service of the One Month Notice. These are:

- unreasonable disturbance of others in the building due to recurring loud music;
- jeopardy to the health and safety of others where guests are entering the building and the rental unit, seemingly with a key;
- immediate risk to health and safety given the current situation with a major health concern in Canada.

The landlord spoke to the immediate concerns of other tenants, where they notified the landlord they were leaving the building immediately due to health and safety concerns. The other tenants' requests to turn down the music were met with blunt responses by the guests of the tenant. The tenant's front door and unit key are in the guests' possession, and the landlord described the process and cost involved with re-keying the entire building and unit.

The tenant acknowledged the concerns of the landlord on these issues. They addressed the problems with visitors, though could not proffer a solution. The guests

are responsible for the noise, and the tenant stated this was due to misplacement of their keys.

The tenant attempted to file an Application for Dispute Resolution on February 5, 2020, though could not identify whether the Residential Tenancy Branch office was open. They admitted to “taking time to process” and having no access to a computer. The tenant and his support worker filed the Application for Dispute Resolution on February 7, 2020.

In their Application for Dispute Resolution the tenant is thus requesting more time to file after the dispute period indicated on the One Month Notice. The dispute period expired on February 3, 2020.

The tenant’s support worker, who assisted him during the conference call hearing, stated the tenant receives five hours of support per week. This is supported through community living, with the tenant having mental health issues. This is primarily support with laundry and access to meals.

Analysis

Regarding 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 this situation, I find that exceptional circumstances for the tenant are not proven in neither the documentary evidence submitted, nor the oral testimony.

The tenant did not show that exceptional specific circumstances were in place during the 10-day dispute period that expired on February 3, 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 tenant stated that they went to the Residential Tenancy Branch directly. Also, they made attempts to speak to someone at the Residential Tenancy Branch, but it didn’t seem like they were communicating. From these statements, I am satisfied the tenant was aware of the need to respond to the One Month Notice and had the

capability to make contact with the proper authority who manages the process of dispute resolution.

At the same time, the tenant admitted to “taking time to process”, being nervous and unsure. There was no evidence whether the tenant spoke with support workers to attempt to resolve the situation.

I find the tenant was aware of the issues surrounding the tenancy. They spoke to the issue of missing keys as best they could, acknowledging that missing keys have been the reason for a bad situation in the building. The landlord stated that they spoke to the tenant when missing keys were an urgent issue and the tenant had to call for help to enter the building.

Moreover, the tenant was able to speak to instances of the “surround sound” loud music. From this evidence I find the tenant knew about issues with other tenants in the building, though not able to act in everyone’s best interests to resolve the situation.

In sum, I find a fact pattern is present that shows the tenant was aware of the situation in the building and the rental unit; therefore, I find this lends weight to the landlord’s assertion that there was a valid and sufficient reason for service of the One Month Notice.

This One Month Notice was served on January 24, 2020. 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: February 29, 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 landlord spoke to all mandatory details of the document itself, with a copy of same present with them at the time of the hearing. 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: April 3, 2020

Residential Tenancy Branch