



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNSHINE INVESTMENTS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 6, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated March 17, 2020 (the "One Month Notice"); and
- an order granting more time to make the Application.

The Tenant was represented at the hearing by V.C., an advocate who advised she was authorized to provide evidence and make submissions on behalf of the Tenant. The Landlord was represented at the hearing by C.O., an agent. Both V.C. and C.O. provided affirmed testimony.

On behalf of the Tenant, V.C. testified the Notice of Dispute Resolution Proceeding package was served on the Landlord. On behalf of the Landlord, C.O. acknowledged receipt. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served on the Tenant for the purposes of the *Act*.

On behalf of the Landlord, C.O. confirmed the Landlord did not served documentary evidence on the Tenant in response to the Application but testified the documents were given to the Tenant at an earlier date. I find the Tenant was not property served with the documentary evidence to be relied upon.

Preliminary Issue – More Time

Section 47(4) of the *Act* confirms that a tenant who receives a notice to end tenancy for cause has 10 days after receipt of the notice to dispute it by filing an application for dispute resolution. Section 47(5) of the *Act* confirms a tenant who fails to dispute a notice to end tenancy for cause within the 10-day period is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

The Tenant recognized he was out of time to make the Application and requested an extension of time. Section 66 of the *Act* permits an arbitrator to grant an extension of time to make an application in “exceptional circumstances”. Policy Guideline #36 confirms the evidence of the reason for failing to do something must be “strong and compelling”. In this case, V.K. testified the Tenant cannot read or write and has a limited understanding of documents, but that he does not have a legal representative such as a committee of estate. She testified that workers attended the residence in the days after March 17, 2020, but that the One Month Notice was only brought to the attention of the case manager on March 26, 2020. No explanation was provided with respect to the failure of the Tenant or the case manager to apply for dispute resolution by March 27, 2020, within the 10-day period set out in section 47(4) of the *Act*. Indeed, as noted above, the Application was not made until April 6, 2020, 20 days after the One Month Notice was received. No documentary evidence of the Tenant’s alleged disability was referred to by V.K.

The Landlord disagreed with V.K.’s description of the Tenant’s capabilities. She testified the Tenant pays his rent by cheque and has attempted to comply with notices that have been issued during the tenancy.

I have carefully considered the evidence and submission of the parties’ representatives. I find there are no exceptional circumstances to justify an extension of time to make the Application as required by section 66(1) of the *Act*. V.K. acknowledged the One Month Notice was received by the Tenant on March 17, 2020 but provided insufficient evidence of exceptional circumstances that would justify an extension. Even if the Tenant was incapable of fully understanding the nature of the One Month Notice, which I do not accept, V.K. confirmed the case manager was aware of the document on March 26, 2020, within the 10-day period described above. As a result, I decline to grant the Tenant an extension of time to make the Application. Therefore, the Application is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the One Month Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The Application is dismissed, without leave to reapply. By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenant. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

***Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial 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: May 29, 2020

Residential Tenancy Branch