Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ-MT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on March 13, 2020, wherein the Tenants sought to cancel a "2 Month Notice Because Tenant Does Not Qualify for Subsidized Rental Unit", issued on January 30, 2020 (the "Notice") as well as more time to make such an Application pursuant to section 66 of the *Residential Tenancy Act* (the "*Act*").

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on May 8, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by the Building Manager, C.R., and the Subsidy Coordinator, J.D. The Tenants were also assisted by their friend, M.J. who acted as an advocate and interpreter.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenants named their children, M.I., N.I. and Z.I., as Tenants on their Application for Dispute Resolution. The Tenants also named the Property Manager, C.R., as the Landlord. A review of the tenancy agreement confirms that only the Tenants, A.I. and

A.S. were named as Tenants, and the Landlord is a society. Pursuant to section 64(3)(c) of the *Act* I amend the Tenants' Application to remove the Tenants' children's names and to correctly name the Landlord.

Issues to be Decided

1. Should the Tenants be granted more time to make their Application for Dispute Resolution?

2. Should the Notice be cancelled?

Background and Evidence

In the normal course, the Landlord bears the burden of proving the reasons for issuing a notice to end tenancy. However, in this case, the Tenants applied for dispute resolution outside the allowable time limit imposed by section 49.1 of the *Act*. As such, the Tenants were responsible for proving "exceptional circumstances" existed which prevented them from complying with the time limit before I could even consider their request to cancel the Notice. Therefore, the Tenants provided their testimony and submissions first.

The Tenants' best friend, M.J., testified as follows. He confirmed the Tenants received the Notice but claimed they could not remember which day. M.J. further stated that on February 18, 2020 the Tenant, A.I. went to the Landlord's property management company and spoke to someone who told the Tenants they could stay and did not have to move out.

The Tenant A.I. also testified. He stated that he spoke with S., an employee of the T.P.M. and she told them they could stay if they agreed to a payment plan.

The Tenants provided a letter in evidence which included a handwritten notation about a $400.00 a month payment plan. The Tenants submitted the second page of the letter in evidence. The Landlord submitted both pages of the letter, which confirms it was dated February 4, 2020 and reads in part as follows:

> "The total TRC you have paid between August 1 2019 and February 1 2020 is $7,252. With the new TRC of $1,837 per month effective August 1 2019 the total to be paid between August 1 2019 and February 1 2020 is $12,859. The difference between amount to be paid and amount in fact paid is $5,607 and we *will expect you to pay it to*

> *the society before you vacate the property as per terms of the notice you have been served with.*
>
> In addition there is $1,412 outstanding on your account which you are paying by $100 per month. *We will need this amount fully paid up before you vacate."*
>
> [my emphasis]

A.I. denied providing false income information to the Landlord. He stated that he works three jobs to support his family as well as sending money to family members in his country of origin. He claimed he was unable to pay the $1,837.00 per month, which is the maximum rent requested by the Landlord and insisted that his rent should remain subsidized.

In response to the Tenants' testimony and submissions, the Landlord's Property manager, C.D., testified as follows. He stated that the Tenants no longer qualify for a rental subsidy. He further stated that they made many requests of the Tenants for income information (as evidenced by the letters provided in evidence) and the Tenants provided misleading income information contrary to the terms of their tenancy agreement.

C.D. further testified that he posted the Notice to the rental unit door on January 30, 2020. A Proof of Service—Notice to End Tenancy was also provided in evidence and which confirmed C.D.'s testimony.

J.D. also testified. She denied the Landlord's representatives told the Tenants they could stay and pointed to the February 4, 2020, in which the Tenants were informed they needed to vacate the rental unit. J.D. stated that although a payment plan was reached for the Tenants to pay the outstanding amounts over time, the Landlord did not agree to the continuation of the tenancy. J.D. also stated that the Tenants no longer qualified for a subsidy as they provided false income information.

Analysis

The Proof of Service indicated the Notice was served on the Tenants by posting to the rental unit door on January 30, 2020. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later; as such, I find the Tenants were served the Notice on February 2, 2020.

The Landlord issued the Notice pursuant to section 49.1 of the *Act* which reads as follows:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1)In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a)operated by a public housing body, or on behalf of a public housing body, and

(b)occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2)Subject to section 50 *[tenant may end tenancy early]* and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3)Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a)not earlier than 2 months after the date the notice is received,

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
(c)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4)A notice under this section must comply with section 52.

(5)A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Pursuant to section 49.1(5) the Tenants had until February 17, 2020 in which to apply for Dispute Resolution. The Tenants applied for dispute resolution on March 13, 2020 which is well outside the time to apply as provided above.

On the first page of the Notice, the Tenants were clearly informed they must respond to the Notice as follows:

Tenant: This is a legal notice that could lead to you being evicted from your home

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice within 15 days of receiving it, by filing an Application for Dispute resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required timeframe, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In their application, the Tenants sought more time to make their Application for Dispute Resolution. Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

> **66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

An extension of time will only be granted if the party has proof that an *exceptional circumstance* occurred that prohibited them from filing their application within the statutory timeframe.

The Tenant testified that he did not understand that he had to apply within 15 days.

In this case, the Tenants claimed that they spoke to the Landlord's property managers on February 18, 2020 at which time the representative, S., informed them that they could pay their rent over time and did not have to move out.

During the hearing the Landlord's representative, J.D., denied the Landlord or the Landlord's agents, agreed to a continuation of the tenancy.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**

- brought forward their application as soon as was practical, under the circumstances.

It is notable that the conversation between A.I. and S. occurred on February 18, 2020, which is after the 15 days the Tenants had to apply to dispute the Notice. Further, it is also notable that S., or A.I. wrote on the February 4, 2020 letter (which clearly indicates that the Tenants must vacate the rental unit). Although there is a notation that the Tenants were to pay $400.00 per month, there was no indication this payment would result in a continuation of the tenancy. Presumably, had the Landlord agreed to continue the tenancy or withdraw the Notice, that would have been recorded in the same fashion as the $400.00 payment plan. On balance, I find it more likely S. and A.I. agreed to a payment plan for the outstanding rent and did not agree to a continuation of the tenancy.

In any event, the Tenants failed to provide any evidence to support a finding that they could not have applied for Dispute Resolution by February 17, 2020.

Although I accept that the Tenants do not speak English as their first language, this is the case for many landlords and tenants in British Columbia. As discussed during the hearing, it is the Tenants responsibility to read, understand, and respond to legal documents related to their tenancy. Should the Tenants require translation assistance, they must take reasonable steps to acquire such assistance. To allow these Tenants to simply argue they did not understand the time limit imposed by the Notice because it was in English would create an inequity for landlords and tenants who speak English as a first language.

I am not satisfied, based on the evidence before me, that the Landlord, or the Landlord's agents agreed to continue the tenancy during the February 18, 2020 conversation. Rather, I find the parties only agreed to a monthly payment plan with respect to the rental arrears.

In the circumstances, I find the Tenants have submitted insufficient evidence to support a finding that exceptional circumstances prevented them from applying on time. I therefore decline their request for more time pursuant to section 66(1) of the *Act.*

As the Tenants' request for more time has been denied, their application to cancel the Notice is similarly dismissed, as they failed to apply for Dispute Resolution within the strict timeline imposed by section 49.1(5). By failing to apply within 15 days, the Tenants are conclusively presumed to accept the end of the tenancy pursuant to section 49.1(6) and must move from the rental unit.

Conclusion

The Tenants did not apply to dispute the Notice within the time required in section 49.1(5) of the *Act,* and their application for more time pursuant to section 66(1) is denied. In failing to apply on time, the Tenants are conclusively presumed under section 49.1(6) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. The Landlord must serve the Order of Possession on the Tenants and may file and enforce the Order in the B.C. Supreme Court as an order of that Court.

As discussed during the hearing, *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 13, 2020

Residential Tenancy Branch