



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice); and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or/arguments are reproduced here.

Preliminary and Procedural Matters-

The parties were informed of the hearing process and they were cautioned that interruptions were not allowed. Despite these instructions, the tenant repeatedly interrupted me when I attempted to inform her of her obligations in support of her application seeking more time.

It appeared the tenant did not want to hear what I had to say and the interruptions continued throughout.

Issue(s) to be Decided

Should the tenant be granted more time to apply to cancel the landlord's Notice and, if so, should the Notice be cancelled?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of April 3, 2020, a fixed term through March 31, 2021, monthly rent of \$1,050, due on the 1st day of the month, and a security deposit of \$525 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The subject of this dispute is the One Month Notice to End Tenancy for Cause issued to the tenant. The Notice was dated June 29, 2020 and listed an effective move-out date of July 31, 2020.

The causes listed on the Notice were:

- the tenant or a person permitted on the residential property by the tenant has;
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
 - (ii)adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The landlord submitted a signed and witnessed statement that the Notice was posted to the tenant's door on June 29, 2020. The tenant, in her application, said that she received the Notice on June 29, 2020, when it was posted to her door. In the hearing, when discussing deadlines for filing an application to dispute the Notice, the tenant denied receiving the Notice on June 29, 2020. She said she was not even "there". The tenant said she saw the Notice "probably" on the 3rd.

In support of her request to extend the time to file an application in dispute of the Notice, the tenant said that she decided not to fight the Notice at first and then changed her mind. The tenant said she just had one bad night and that was not enough for an eviction.

Analysis

Based on the documentary and oral evidence provided, and on a balance of probabilities, I find the following.

Section 47 of the Act authorizes a landlord to seek to end a tenancy for a variety of reasons by providing a tenant with a notice to end tenancy that complies with section 52 of the Act.

The One Month Notice provided information to the tenant, which explained that the tenant had the right to dispute the Notice **within 10 days** by filing an application for dispute resolution at the Residential Tenancy Branch (RTB) online, in person at any Service BC Office or by going to the RTB office in Burnaby in dispute of the Notice.

The Notice also explains that if the tenant did not file an application to dispute the Notice within the required time limit, 10 days, then the tenant is **conclusively presumed** to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. These instructions are provided in sections 47(4) and 47(5) of the Act.

On the basis of the tenant's own application, supported by the landlord's evidence, I find that the tenant was served and received the One Month Notice to End Tenancy, dated June 29, 2020 on June 29, 2020. Therefore, the tenant had until July 9, 2020, to file her application and she did not until July 27, 2020.

As this is more than 10 days after she received the Notice, I find that the tenant did not file her application to dispute the Notice within the timeline established by section 47(4) of the Act.

Section 66(1) of the Act authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated timelines is very strong and compelling. A typical example of an exceptional reason for not complying

with the timelines established by legislation would be that the tenant was hospitalized for an extended period after receiving the Notice.

In my view, not filing the application until a reconsideration of a decision not to file the papers is not an exceptional circumstance and therefore, I find that the reason provided by the tenant for not disputing the Notice within 10 days of receiving it is neither strong nor compelling. I therefore **dismiss** the tenant's application for more time to apply to cancel the Notice.

Due to the above, I find the tenant was conclusively presumed to have accepted that the tenancy ended on July 31, 2020, the effective date of the Notice and I dismiss the tenant's application seeking cancellation of the One Month Notice.

In reviewing the Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 the Act.

I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after it has been served on the tenant, pursuant to section 55(1)(b) of the Act.

The order of possession for the rental unit is included with the landlord's Decision and must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

Conclusion

The tenant's application is dismissed, without leave to reapply, as I have found that she did not apply to dispute the Notice within the required timeline and as I have dismissed her application for an order extending the time to file an application disputing the Notice.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

This decision is final, legally binding and 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: September 1, 2020

Residential Tenancy Branch