



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Victoria Native Friendship Centre
Housing and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- An extension to the statutory time limit for disputing a One Month Notice to End Tenancy for Cause (a One Month Notice) under section 47 (4) of the Act; and
- Cancellation of a One Month Notice.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. No one appeared on behalf of the Landlord. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one appeared at the hearing on behalf of the Landlord, I confirmed service of these documents as explained below.

The Tenant testified that the Application and the Notice of Hearing were personally served on two agents for the Landlord on either July 30, 2020, or July 31, 2020. Although no one appeared in the hearing on behalf of the Landlord, I note that documentary evidence was submitted on the Landlord's behalf in relation to the hearing.

Based on the above and in the absence of any evidence to the contrary, I accept that the Landlord's agents were personally served with notice of the hearing and a copy of the Application on or before July 31, 2020, and were therefore aware of the Application and the hearing. Pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled, despite the absence of the Landlord or their agents.

At the request of the Tenant, a copy of the decision will be made available for them to pick up at the Residential Tenancy Branch (the Branch).

Preliminary Matters

Although the Tenant acknowledged receipt of the One Month Notice on July 9, 2020, they did not file their Application seeking cancellation of the One Month Notice until July 27, 2020, past the legislative deadline for doing so set out under section 47 (4) of the Act. In the Application the Tenant also sought an extension to the 10 day time period for filing the Application.

Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances and 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.

In the hearing the Tenant stated that they became exceptionally ill with a fever and respiratory symptoms shortly after the One Month Notice was received and were advised by 811 to self-isolate for 14 days. The Tenant stated that they were not able to file the Application online as they only have a phone, and filed it in-person at the Branch as soon as possible once the self-isolation period was over.

No one appeared on behalf of the Landlord to dispute or call this testimony into question. Based on the Tenant's affirmed and uncontested testimony, I accept that they were ill with respiratory and other symptoms which required them to self-isolate, preventing them from filing the Application within the statutory time period set out under section 47 (4) of the Act. Based on the Tenant's uncontested and affirmed testimony, I find that exceptional circumstances therefore existed which prevent the Tenant from filing the Application on time, and as the Application was not filed after the effective date of the One Month Notice, I therefore grant the Tenant an extension to the time period for filing the Application.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on November 2, 2017, states that the tenancy is month-month (periodic) and that rent in the amount of \$715.00 is due on the first day of each month. It also states that a security deposit in the amount of \$325.00 is to be paid. The Tenant did not dispute that these were the correct terms for the tenancy agreement when it was entered into.

The Tenant stated that they received the One Month Notice from their door on July 9, 2020. The One Month Notice in the documentary evidence before me is signed and dated July 9, 2020, has an effective date of August 11, 2020, and lists the following grounds for ending the tenancy under section 47 of the Act:

- the tenant or a person permitted on the residential property by the tenant has:
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Tenant denied the allegations made against them in the One Month Notice stating that the Landlord does not have grounds to end the tenancy and that they are confused about why the One Month Notice was served. They also denied being served any breach or warning letters.

No one appeared in the hearing on behalf of the Landlord to provide any testimony or to present any evidence for my consideration.

Analysis

Based on the Tenant's uncontested and affirmed testimony, I am satisfied that they received the One Month Notice July 9, 2020. Although the Tenant filled the Application seeking cancellation of the One Month Notice past the deadline for doing so set out under section 47 (4) of the Act, as stated in the Preliminary Matters section of this decision, I have granted the Tenant an extension of this time period as allowable under section 66 (1) and 66 (3) of the Act.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

During the hearing the Tenant denied the allegations against them as set out in the One Month Notice and stated that they are confused about why it was served, as they did not receive any breach or warning letters and do not agree with the grounds stated for ending the tenancy.

No one appeared in the hearing on behalf of the Landlord to provide any testimony for my consideration. Although documentary evidence was submitted for my consideration on behalf of the Landlord prior to the hearing, rule 7.4 of the Rules of Procedure states that evidence must be presented and that if a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As no one appeared in the hearing on behalf of the Landlord to present the documentary evidence submitted or to make any arguments or submissions in relation to it, I therefore decline to consider the Landlord's documentary evidence. Further to this, the Tenant denied that the Landlord has grounds to end the tenancy under section 47 of the Act.

Based on the above, I find that the Landlord failed to meet the burden of proof incumbent upon them to satisfy me that the One Month Notice is valid. As a result, I order that the One Month Notice dated July 9, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Conclusion

I order that the One Month Notice dated July 9, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

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: September 1, 2020

Residential Tenancy Branch