



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

On August 14, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause (“the One Month Notice”). The Tenant also applied for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement and to suspend or set conditions on the Landlords right to enter the rental unit.

The matter was set for a conference call hearing. The Tenant and Landlord appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Did the Tenant apply to dispute the One Month Notice within the required time?
- Does the Landlord have sufficient reason/ cause to end the tenancy?

Background and Evidence

The Tenant and Landlord testified that the tenancy began in 2011 or 2012 and is on a month to month basis. Rent in the amount of \$750.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$300.00.

The Landlord testified that he served a One Month Notice to End Tenancy for Cause ("the One Month Notice") to the Tenant by posting the Notice on the Tenant's door on August 1, 2020.

The Tenant confirmed that she received the Notice on August 1, 2020 at 2:00 am. The Tenant provided a copy of a One Month Notice to End Tenancy for Cause dated August 1, 2020. The One Month Notice has an effective date of September 1, 2020.

The One Month Notice contains information for Tenants who receive the notice. The Notice provides: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE. A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. If a tenant does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The Tenant acknowledged that she applied to dispute the Notice on August 14, 2020. The Tenant's application did not include a request for more time to dispute a notice to end tenancy. In the Tenant's application, she selected "No" to the question; are you filing your application after the 10-day dispute period indicated on the notice. The Tenant signed the application on August 13, 2020.

Section 53 of the Act states that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to be the earliest date that complies with the section.

The Tenant testified that she had been in the hospital due to a sexual assault. She testified that she arrived home from the hospital and received the One Month Notice on August 1, 2020. She testified that she returned to the hospital on August 8, 2020 and remained there for a few days. The Tenant did not provide any medical evidence from a doctor or hospital.

The Tenant was asked why she did not dispute the One Month Notice during the eight-day period that she was at home. The Tenant testified that she was feeling stressed and did not know what to do.

Analysis

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

The Tenant's application to dispute the One Month Notice is late. I find that the Tenant received the One Month Notice on August 1, 2020. The Tenant applied to dispute the One Month Notice on August 14, 2020. The latest date the Tenant could apply to dispute the 10 Day Notice was August 11, 2020. The Tenant did not apply for dispute resolution within 10 days of receiving the One Month Notice.

Upon an application for more time to dispute a notice to end tenancy, an Arbitrator may extend a time limit established by this Act only in exceptional circumstances. The Tenant's application does not include a request for more time to dispute a notice to end tenancy. In addition, the Tenant provided insufficient evidence to prove that she was unable to dispute the notice to end tenancy due to an exceptional circumstance, such as hospitalization or a medical reason.

Pursuant to section 47(5) of the Act, if a Tenant does not make an application for dispute resolution within 10 days, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and *must* vacate the rental unit by that date.

Since the One Month Notice was served on August 1, 2020, the effective date of the Notice (the date the Tenant must vacate) automatically changes to September 30, 2020.

Since the legislation provides that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, the hearing did not proceed on the application to cancel the One Month Notice.

The Landlord testified that the Tenant has paid the rent for October 2020.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated August 1, 2020, is late and is dismissed. The tenancy is ending.

Under section 55 (1) of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that 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. I find that the Landlord is entitled to an order of possession effective October 31, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant did not apply for dispute resolution within 10 days of receiving the One Month Notice and did not apply for an extension of time to dispute a notice to end tenancy.

The Tenant's application was made three days late and is dismissed. In accordance with section 55(1) of the Act, I grant the Landlord an order of possession effective October 31, 2020. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that 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: October 01, 2020

Residential Tenancy Branch