



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MT, OLC, MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 23, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence packages and did not take issue with the service of these documents. I find the Tenant sufficiently served his application and evidence.

The Landlord brought a witness with him to the hearing. The Landlord confirmed that he posted his evidence to the Tenant's front door on or about September 23, 2020. The Landlord's witness confirmed that he was present and witnessed this occur. Although the Tenant stated he never saw any package on his door, pursuant to section 88 and 90 of the Act, I find the Landlord sufficiently served the Tenant with his evidence. I find the Tenant is deemed to have received this package 3 days after it was posted, on September 26, 2020.

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice)
- More time to make an application to cancel the Notice.

Issues to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenant has applied for more time to make an application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenant stated that he received the Notice on July 17, 2020. The Tenant provided a file number for a previous hearing that was scheduled to discuss this Notice. I note the Tenant filed to dispute the July 17, 2020 Notice on July 21, 2020. A Hearing was set for August 27, 2020, which the Tenant failed to attend. The Tenant explained in this hearing that he dialed into the wrong number and missed his last hearing. As a result, the Arbitrator presiding over that hearing dismissed that application to cancel the Notice, with leave to reapply. However, that arbitrator also specifically stated that no time extensions were being given for reapplying.

Subsequently, the Tenant re-applied to cancel the July 17, 2020, Notice on September 3, 2020, and this hearing was scheduled for October 23, 2020.

A copy of this Notice was provided into evidence, which lists the following ground for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Section 49 of the *Act* states that 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. As the Tenant received the Notice on July 17, 2020, they had until August 1, 2020, to dispute the Notice.

After reviewing the file, I note that the Tenant initially applied to cancel the Notice on time. However, he failed to attend that hearing, and the application was dismissed. Although it was dismissed, with leave, I note that no orders were made with respect to extending time limits to file the application to cancel the Notice. I further note that the Tenant filed this application to cancel the Notice on September 3, 2020, which was nearly 7 weeks after he received the Notice in July 2020.

Section 49 (8)(a) states as follows:

A tenant may dispute a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice

Section 49 states as follows:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Since the Tenant failed to attend the last hearing, that application was dismissed. This application is a separate proceeding, and no orders were made giving an extension of time to file the application to dispute the Notice. With respect to this application, and the hearing held today, I note the Tenant did not apply within the allowable 15 day window which lapsed on August 1, 2018. The Tenant is significantly over the allowable time

frame to dispute the Notice due to the fact he never attended his first hearing in August 2020.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

I note that the Tenant expressed that he wanted more time to file this application. However, during the hearing when I asked them to explain why he required more time to file the application, he only stated that he dialed the wrong number at the last hearing. Ultimately, I do not find these circumstances are exceptional, such that it warrants extra time to file this application.

As a result, I find that the Tenant is not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed.

As the Tenant’s Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 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, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on October 31, 2020.

Conclusion

The Tenant’s request for more time to make an application to cancel the Notice is dismissed. Further, the Tenant’s application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **October 31, 2020, at 1pm**. This order must be served on the Tenant. If the Tenant fails to comply with this order

the Landlord may file the order with the Supreme Court of British Columbia and be 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 23, 2020

Residential Tenancy Branch