



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an extension of the timeline for disputing the Notice, pursuant to section 66.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution 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 the Act.

Issues to be Decided

1. Is the tenant entitled to additional time to dispute the Notice?
2. If the timeline extension is granted, is the tenant entitled to cancellation of the Notice?
3. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in March 2013. Rent is \$870.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$375.00 was collected and the landlord holds it in trust.

Both parties also agreed the landlord served the Notice in person to the tenant on October 18, 2020 at 2:00 P.M. and the tenant continues to occupy the rental unit. The tenant's application was submitted on October 29, 2020.

A copy of the Notice was provided. The Notice is dated October 18, 2020 and the effective date is November 20, 2020. It states:

The tenant or a person permitted on the property by the tenant has
Seriously jeopardized the health or safety or lawful right of another occupant or the
landlord.
Put the landlord's property at significant risk.

The details of the cause are:

1. July 17/20: Yearly inspection. Unit is not safe for health, fire, safety to others. Cloths, furniture, books on floor. [...]
2. August 20 – Master key of manager. Fire dep. Unable to open tenant's unit. [...]
3. Written warning served, five tenant 3 weeks to clean.
4. Tenant refused to clean the unit + refused inspection.

The tenant affirmed she has medical issues and needs an extension of the timeline for disputing the Notice. The tenant stated she can not concentrate, and she has difficulty moving. I asked twice the tenant if she had any exceptional circumstance in the ten days after she received the Notice and she was unable to answer my question. The landlord said she is not aware of any medical issues regarding the tenant and that the tenant is able to move, takes the bus regularly and has been moving furniture recently in her rental unit.

The landlord affirmed she inspected the rental unit on July 22, 2020 and found the unit was unsafe due to hoarding conditions. The landlord was barely able to walk through the one-bedroom rental unit because of the large amount of items stored. The landlord offered help to the tenant to clean the rental unit, but the tenant denied the offer.

On August 19, 2020 the tenant received a warning letter from the landlord. It states: "I had given a verbal warning to clean up your unit for easy access for emergency. But each year it getting worse and worse."

On September 12, 2020 the landlord inspected the rental unit again and it was unsafe due to hoarding conditions. The stove was covered with books, it was not possible to walk through the rental unit because of the large number of items stored, the rental unit's overall condition was worse than in the July 22, 2020 inspection and there was a bug infestation.

The tenant confirmed receipt of a second written warning regarding the rental unit's condition on October 03, 2020. The landlord submitted into evidence 15 photographs showing the cluttered rental unit.

The tenant said she tried to clean the rental unit, but because she is fragile, she was not able to clean it.

I note that both parties were instructed at the outset of the hearing that only one person can speak at the same time and parties must be respectful at all times. Towards the end of the hearing the tenant interrupted the landlord twice. I warned the tenant that if she interrupted one more time I would mute her; pursuant to Rule of Procedure 6.10. The tenant interrupted one more time and I muted her.

Analysis

Based on both parties undisputed testimony, I find the tenant was served the Notice in person on October 18, 2020, in accordance with section 88 (1) of the Act.

Page 3 of the Notice received by the tenant states:

2. INFORMATION FOR TENANTS

You have the right to dispute this Notice **within 10 days** after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. **An arbitrator may extend your time to file an Application, but only if he**

or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 day, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner). If you do not file an Application, move or vacate, your landlord can apply for an Order or Possession that is enforceable through the court.

Note: the date a person receives documents is what is used to calculate the time to respond.

(emphasis added)

Sections 47(4) and (5) of the Act state:

(4) 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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

The tenant has applied for more time to dispute the Notice, claiming she could not apply on time because of health issues.

Section 66 of the Act states:

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].

The tenant did not provide a coherent testimony about her medical conditions. The tenant did not present any document about the medical condition that prevented her from filing on time. I find on a balance of probabilities the tenant has not substantiated exceptional circumstances prevented her from applying for dispute resolution within the statutory timeline and I deny the application to extend the timeline of section 47(4) of the Act.

As such, the tenant's application for a timeline extension is dismissed without leave to reapply.

Section 47(5) is mandatory, and I do not have discretion as to its application. The tenant did not file an application to dispute the notice within 10 days. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (November 20, 2020) and must move out of the rental unit.

The Notice is in accordance with Section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the grounds to end tenancy and is in the approved form.

As the tenant is occupying the rental unit, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(1) of the Act.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conducts of the tenant.

I warn the tenant that he may be liable for any costs the landlord incur to enforce the order of possession.

Conclusion

I dismiss the tenant's application for additional time to dispute the Notice without leave to reapply. The tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: January 29, 2021

Residential Tenancy Branch