



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1193625 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Landlord: OPC FFL
Tenant: CNC-MT, MNDCT, LAT, OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66, and
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

MD, legal counsel, represented the landlord in this hearing. The tenant attended with her support worker, LC. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package and evidence(“Applications”). In accordance with section 89 of the *Act*, I find

that both the landlord and tenant were duly served with each other's Applications and evidence packages.

Preliminary Issue – Tenant's Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 9:30 am, and ended at 10:30 a.m. As the time allotted was not sufficient to allow the tenant's other claims to be heard along with the application to cancel the 1 Month Notice to End Tenancy, I exercise my discretion to dismiss the portions of the tenant's application unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Preliminary Issue—Tenant's Application for an Extension of Time to File their Application for Dispute Resolution

The tenant confirmed receipt of the 1 Month Notice dated November 6, 2020, which was sent to the tenant by registered mail on November 13, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served to the tenant on November 18, five days after mailing.

The tenant testified that due to her disability and inability to understand the process, she did not open the package that was sent to her by the landlord until January 1, 2021, and that she was unaware of the strict time limits. The tenant testified that she filed her application on the first day following the holidays after opening the package.

The tenant is requesting an extension of time to dispute the 10 Day Notice under Section 66 of the *Act*. Counsel for the landlord submits that I do not have the jurisdiction to grant the tenant more time to file their application as the effective date of the 10 Day Notice, December 31, 2020, had passed.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

RTB Policy Guideline #36 states the following about the extension of time limits to apply for arbitration to dispute a Notice to End Tenancy after the effective date of the Notice has passed:

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

*For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter **even where the tenant can establish grounds that there were exceptional circumstances**. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.*

Although section 66 (1) allows me to extend the time limit established by the Act in exceptional circumstances, RTB Policy Guideline #36 clearly states that an arbitrator may not extend the time limit to apply for arbitration after the effective date of the Notice to End Tenancy. In this case, I find that the tenant filed their application after the effective date, December 31, 2020. Under these circumstances, I am not able to consider the tenant's application to extend the time limit for filing their application to cancel the 1 Month Notice as I have no jurisdiction to hear the matter.

Issues to be Decided

Should the landlord's 1 Month Notice be Cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2007, with monthly rent currently set at \$718.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$350.00 and a pet damage deposit in the amount of \$200.00, which the landlord still holds.

The landlord served the tenant with a Month Notice, dated November 6, 2020, on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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.
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
4. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord served the 1 Month Notice in response to an email sent by the tenant dated October 29, 2020. Counsel for the landlord submits that this email constitutes a threat made by the tenant intended to induce payment of an amount that the landlord was not required to pay. Counsel submits that this email was sent in an effort to intimidate or coerce the landlord into complying with the tenant's demands.

The tenant testified that the email was sent to the landlord in an effort to voice her disappointment that other tenants have been given monetary offers by the landlord, which the tenant was not given. The tenant testified that she was not having a good day, and feels that she should not be punished for the one letter. The tenant testified that there was a long history with the landlord and harassment of tenants.

The tenant's support worker testified in the hearing that the tenant receives support and utilizes services from the support worker and the association to assist the tenant with mental health challenges. The support worker also provided a statement in the tenant's evidentiary materials confirming that the tenant has been receiving these services for over two years, and that the tenant was merely voicing her disappointment in that letter.

Analysis

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As noted above, I do not have jurisdiction to consider the tenant's application to extend the time limit for filing their application to cancel the 1 Month Notice. Section 47 of the

Act provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2020. In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful with their application, I allow the landlord's application to recover the filing fee for their application. The landlord continues to hold the tenant's security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit of in satisfaction of the monetary claim.

Conclusion

The tenant's application related to the 1 Month Notice dated November 6, 2020 is dismissed without leave to reapply.

I find that the landlord's 1 Month is valid and effective as of December 31, 2020. 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.

I allow the landlord's application to recover the filing fee for their application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit of in satisfaction of the monetary claim.

The remainder of the tenant's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: March 30, 2021

Residential Tenancy Branch