



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on April 12, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1-Month Notice to End Tenancy (the Notice); and,
- more time to make an application to cancel the Notice.

The Landlords and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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.

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 she received the Notice on December 31, 2020. The Tenant also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

- Tenant is repeatedly late paying rent.

Section 47 of the *Act* states that 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. As the Tenants received the Notice on December 31, 2020, she had until January 10, 2021, to dispute the Notice. However, given January 10, 2021, was on a Sunday, the Tenant was given an additional day (first business day following the lapse of the 10 day period), until January 11, 2021.

After reviewing the file, I note that the Tenant's application was not made until January 12, 2021. In this case, the Tenant did not apply within the allowable 10 day window.

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**.

During the hearing, I asked the Tenant why she was unable to apply in time, and why more time was required to file this application. However, the Tenant only loosely referred to the fact that she wanted to have someone else file the application for her, and did not elaborate and explain why she was unable to make this application, or have someone make it for her, within the 10 day window.

I do not find the Tenant has sufficiently demonstrated that their circumstances were exceptional, such that it warrants extra time to file an application for review.

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 in its entirety.

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 Landlord also presented several bank statements substantiating all of the repeated late payments that led to the issuance of the Notice. The Order of Possession will be effective 2 days after it is served on the Tenant.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **April 30, 2018, at 1pm**. This order must be served on the tenants. If the tenants fail 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: April 12, 2021

Residential Tenancy Branch