



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC-MT
For the landlord: OPC, OPN

Introduction

The tenant made the Application for Dispute Resolution on January 29, 2021 seeking more time to apply to dispute a Notice to End Tenancy and an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 27, 2021.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. Each party confirmed the evidence of the other, sent in advance of the hearing as part of the application process. On this basis, the hearing proceeded.

Preliminary Matter

At the outset of the hearing I reviewed the grounds on which each party applied for dispute resolution. The landlord chose to apply for an order of possession based on a tenant’s notice to end tenancy; however, I confirmed they received no such notice from the tenants. To reflect this, I amend the landlord’s Application to omit this ground.

Issue(s) to be Decided

Are the tenants entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit of time in which to do so as prescribed by the *Act*?

Are the tenants entitled to an order that the landlord cancel or withdraw the One Month Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to s. 55 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord issued the One Month Notice on October 30, 2020, delivered in person, with the effective date for the tenant to move out being November 30, 2020. The landlords indicated the following reasons on page 2:

- ☐ 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.

Concerning the reason for the One Month Notice, the landlord presented that there were several times when they had taken up the issue of smoking in the rental unit. In their evidence, the landlord provided copies of letters to the tenants regarding this issue. This stems back from 2012 and follows through to 2020 prior to the landlord issuing the One-Month Notice.

The tenant filed an Application for Dispute Resolution (the “Application”) on January 29, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). This follows from a prior Arbitrator’s order granting leave to reapply on January 29.

The tenant also requested more time to file the Application after the dispute period indicated on the One Month Notice expired on November 9, 2020. The tenant addressed their request to file a late Application in this matter by referring to the prior Arbitrator's decision to allow leave to re-apply. This was due to neither party submitting a copy of the One-Month Notice in that hearing process.

The landlord here presented that the tenants' problems with smoking continued after repeated warnings. Neighbouring tenants continue to complain and based on their observations of a younger neighbour's physical reactions to smoke and odour. The tenants continue to subject other tenants to smoke and odour, and this causes disagreements and ostracism of these tenants within the building.

The tenants here presented that they ceased growing cannabis altogether after a prior Arbitrator's ruling in 2020. They have alleviated or mitigated the impact of smoke emanating from their unit, by smoking using a fan or smoking off the property entirely. Further, they propose that smoking is not part of the tenancy agreement – because this was an issue in a prior arbitration hearing, the landlord can't re-serve a One-Month Notice for this same issue.

Analysis

The *Act* s. 47(1) states that a landlord may end a tenancy if any of the certain categories apply. One of the conditions listed are those indicated by the landlord here on the One-Month Notice: "The tenant . . .has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." On page 3 of the document, the landlord gave detail on the details of that cause.

Following this, s. 47(4) states that within 10 days of receiving it, a tenant may dispute the One-Month Notice by making an application for dispute resolution.

In regard to the tenants' request to file the tenants' Application after the dispute period, the *Act* provides the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that exceptional circumstances for the tenants are not present.

The tenants here re-applied to cancel the One-Month Notice issued on October 30, 2020. This was after they were granted leave to re-apply in a prior Arbitration, on January 29, 2021.

The Residential Policy Guideline 36 'Extending a Time Period' gives a statement of the policy intent of the legislation. It stipulates:

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.

The "exceptional circumstances" as provided for by the *Act* do not include the tenants' ability to apply for arbitration to dispute the One-Month Notice beyond the effective date of that notice. Put simply, the tenants here applied for this present dispute resolution after the One-Month Notice effective end-of-tenancy date of November 30, 2020. What the tenants here present as their re-application from the prior dispute resolution does not constitute exceptional circumstances.

The landlord issued this One-Month Notice on October 30, 2020, with an effective end-of-tenancy date of November 30, 2020. The tenants here applied for dispute resolution after November 30, 2020. The *Act* s.58(2)(b) provides that an Arbitrator with delegated authority must resolve a dispute unless the application was not made within the applicable period specified under the *Act*. As stated by the Arbitrator in the prior decision: "Leave to reapply is not an extension of any applicable limitation period." Because the time limit for the tenant's Application is not extended past the effective date, I have no jurisdiction under the *Act* to resolve the dispute.

This One-Month Notice was issued and served to the tenants on October 30, 2020. Here, the tenants failed to apply for dispute resolution within the specified time limit of 10 days after they received it. Furthermore, and as noted above I have found the tenants are not entitled to more time to dispute the One Month Notice. On this basis, I find the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the One-Month Notice: November 30, 2020. As such, the tenants must vacate the rental unit.

For these reasons, I dismiss the tenant's application to cancel the One-Month Notice, without leave to reapply. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the One Month Notice complies with those requirements; therefore, the landlord is entitled to an order of possession.

Conclusion

I grant an Order of Possession to the landlords effective two days after service on the tenant. The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 s. 9.1(1) of the *Act*.

Dated: May 3, 2021

Residential Tenancy Branch