



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT

Introduction

The tenant made the Application for Dispute Resolution on March 15, 2021 seeking more time to apply to dispute a Notice to End Tenancy and an order to cancel the Two Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice"). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 11, 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.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant 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*?

Is the tenant entitled to an order that the Respondent cancel or withdraw the Two-Month Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to reimbursement of the Application filing fee?

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 Two-Month Notice on February 23, 2021. The hand delivered this to the tenant on February 24, 2021. The effective date for the tenant to move out was May 1, 2021. They indicated on page 2 that they or a family member will occupy the rental unit.

The document on page 1 provides the instruction to the tenant that they have the right to dispute the Two-Month Notice within 15 days of receiving it by filing an Application. The tenant here did so on March 15, 2021. They initiated contact with a tenant advocate who made the Application on their behalf. This advocate provided a letter in support of the tenant's delayed Application. This sets out that the tenant made contact on March 3, 2021; however, the advocate did not receive the documents from the tenant until March 15, 2021. The advocate acknowledged the Application date of March 10, 2021.

In the hearing, the tenant provided that they do not possess the technology to upload documents digitally. They were very ill for some time after an incident between them and a neighbour on February 5, 2021. They stated they were "well aware of the deadline"; however, they were subject to panic attacks around this time.

The tenant provided a letter of support from their psychiatrist who named "psychosocial stressors"; these include "interpersonal difficulties with [their] landlord." This was based on the most recent consultation on May 18, 2021. In the hearing the tenant also cited a letter they provided from a nurse practitioner who requested this dispute be delayed until "after August 31, 2021, due to medical reasons."

In the hearing, the landlord presented a message from the tenant dated May 26, in which the tenant advised: "we will be moving as soon as we're accepted into a new rental unit." The landlord responded on June 2 to query the final move out date and why the tenant had not paid the June rent. In response to this, the tenant provided that they will be moving on July 1, 2021.

Analysis

In regard to the tenant's request to file the Application after the dispute period, the *Act* outlines 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 the tenant has not proven exceptional circumstances in both their documentary evidence submitted, and their oral testimony.

The tenant did not show that exceptional specific circumstances were in place during the 15-day dispute period that expired on March 10, 2021. I appreciate the tenant bears the burden of psychosocial stressors; however, this evidence does not show how this condition prevented them from providing important information regarding a pending eviction to the advocate they attempted to engage for assistance.

Also, the consultation with the psychiatrist was more recent, approximately two months after the final Application deadline. This does not support the tenant's reason for a late Application, nor does the note from the nurse practitioner. As such, the letter does not present circumstances on what occurred specifically with the tenant within the dispute period, during the time frame in question. There is no explanation of how psychosocial stressors prevented the tenant's action to defend their right to maintain tenancy in the rental unit.

This Two-Month Notice was served on February 24, 2021. The tenant failed to apply for dispute resolution within the specified time limit of 15 days after they received it. Furthermore, and as noted above I have found the tenant is not entitled to more time to dispute this Two-Month Notice. On this basis, I find the tenant is conclusively presumed under s. 49(9) of the *Act* to have accepted that the tenancy ended on the effective date on the Two-Month Notice, on May 31, 2021. In line with this, the tenant must vacate the rental unit.

The tenant verified that they shall move out from the rental unit on July 1, 2021. Although the landlord stated they are willing to consider the Two-Month Notice withdrawn, I find the Two-Month Notice is valid and legally ends the tenancy. I consider the July 1, 2021 move-out date as an agreement between the parties that the tenancy will end on that date.

For these reasons, I dismiss the tenant's application to cancel the Two-Month Notice. 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 Two-Month Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Two-Month Notice complies with the requirements of form and content. The landlords are entitled to an order of possession on the effective date within the Two-Month Notice; however, the parties agreed to the final move-out date of July 1, 2021. This is the date provided to the landlord on the Order of Possession.

Because the tenant was not successful in their Application, they are not entitled to the reimbursement of the Application filing fee.

Conclusion

I grant an Order of Possession to the landlords effective no later than July 1, 2021, after service on the tenant. I provided this Order to the landlord on these terms and they must serve this Order on the tenant as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia where it will 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 s. 9.1(1) of the *Act*.

Dated: June 14, 2021

Residential Tenancy Branch