



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL (landlord); CNC-MT, FFT (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- A request for more time to cancel the Notice to End Tenancy pursuant to section 66;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with her daughter and agent JG ("the landlord"). The tenants attended. All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The parties had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Preliminary Issue - Mediation

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The parties discussed a mutually agreeable date when the tenants would be prepared to move out. During the hearing, the tenants asked if they could stay in the unit until the end of August 2021 at which time they had plans to move elsewhere. The landlord refused the request and asked for an Order of Possession effective June 30, 2020.

When the tenants' request for a later move-out date was refused, the tenants said they would not move out even if I ordered them to do so and issued an Order of Possession. The tenants questioned me about how they could appeal my decision and get more time before having to move out.

Issue(s) to be Decided

Are the parties entitled to the relief requested?

Background and Evidence

The parties agreed the tenancy began on August 1, 2015. Monthly rent is \$1,025.00 payable on the first. At the beginning of the tenancy, the tenants provided a security deposit of \$500.00 which the landlord holds.

The landlord issued a One Month Notice on February 22, 2021. The tenants acknowledged service on that day.

A copy of the Notice was submitted which is in the standard RTB form. The Notice requested an end of the tenancy because the tenants are repeatedly late paying rent. The Notice had an effective date of March 31, 2021,

The Notice contained the usual provision that the tenants could dispute the Notice within ten days of receipt. The tenants did not dispute the Notice within that time. Instead, the tenants disputed the Notice on March 15, 2021.

The tenants stated that the reason for the filing of the dispute outside the ten day period was that they were attempting to convince the landlord to let them stay until the end of June 2021 so that their children could finish school.

The parties agreed the tenant was late paying rent in January and February 2021 as well as September, October, November, and December 2020. The landlord testified that she never agreed to late payment and always asked that payments be made in a timely manner.

The landlord requested an Order of Possession effected June 30, 2021 at 1:00 PM. The tenants requested that the Notice be cancelled and they be granted more time to file a dispute to the Notice.

Analysis

I first address the issue of the tenants' request for more time to file a dispute.

Request for More time to File a Dispute

The tenants confirmed personal service of the landlord's One Month Notice on February 22, 2019.

Section 47(4) of the Act provides that upon receipt of a One Month Notice, the tenants may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Details regarding the requirements for a tenant disputing a notice are provided on the first page of the Notice form, as follows, in part:

*You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby.*

If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

The second page of the Notice provides more details on filing an application to dispute the notice, and the timelines for doing so, as follows, in part (**bold** added):

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 days, 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 of Possession that is enforceable through the court.

The tenants submitted their application to dispute the Notice on March 15, 2021, which is beyond the 10 days allowed under section 47 of the *Act*.

However, the tenants' application included a request for more time to file an application to dispute the notice. The tenant explained that they were unable to file their application within the allowable time limit due to efforts to convince the landlord to let them stay until the end of the school year, that is, the end of June 2021.

Requests for more time to file an application are only considered in "exceptional" circumstances. *Residential Tenancy Policy Guideline 36. Extending a Time Period* sets out the consideration for "exceptional" circumstances when an applicant seeks to extend a time limit provided by the *Act*, as follows, in part:

Exceptional Circumstances

*The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is **very strong and compelling**. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some **persuasive evidence to support the truthfulness of what is said**.*

...

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

...

[My emphasis added]

I asked the tenants why they did not file within the allowable period. The tenants did not provide any testimony or submit any evidence to show why they were unable to file a Dispute within the timeline except to say they were busy and occupied with trying to convince the landlord. They submitted no plausible explanation which amounts to a **serious and compelling reason** for why they were prevented from doing this during the dispute period or by contacting another person to do it for them.

As stated earlier, the tenants repeatedly said they only wanted to stay until the end of June 2021 so their children could finish the school year. To accomplish this, the tenants stated that they submitted their application along with a request for more time to file.

However, in the meantime, as testified by the tenants, they now need yet more time. During the hearing, the tenants asked if they could stay in the unit until the end of August 2021 when they had plans to move elsewhere. When the landlord refused during the hearing, the tenants questioned me about how they could appeal my decision and get more time before having to move out.

I find that the application for more time is not based upon a strong and compelling reason or exceptional circumstances. I find the tenants' reason is really an "excuse" as stated in the *Policy Guideline* to stay in the unit until the end of August 2021 when it is convenient for them to move out.

I therefore find that the tenants' reasons do not meet the criteria of "exceptional" circumstances as explained in *Policy Guideline 36*, to obtain an extension of time to file a dispute.

As such, the tenants' request for more time to apply to cancel the One Month Notice is dismissed without leave to reapply.

I will now turn to the landlord's application for an Order of Possession.

Landlord's application

As acknowledged by the tenants, I find the tenants were served with the Notice on February 22, 2021.

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.

Based on the testimony and the Notice before me, I find that the tenants were served with an effective Notice and the tenants' application to dispute the Notice filed outside 10 days has been dismissed.

I find the Notice complied with section 52 in terms of form and content.

Therefore, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, March 31, 2021, and must move out of the unit.

As this has not occurred, I find that the landlord is entitled to an Order of Possession effective on the date requested, June 30, 2021, pursuant to section 55 of the Act.

Filing Fee

As the landlord has been successful in this application, I grant the landlord an award for \$100.00 for reimbursement of the filing fee which the landlord may deduct from the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective June 30, 2021.

The tenants' application is dismissed without leave to reapply.

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: June 22, 2021

Residential Tenancy Branch