Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHIRLYN INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: CNL-4M-MT

Introduction

The tenant disputes a *Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit* (the "Notice") pursuant to sections 49(6)(e) and 49(8) of the *Residential Tenancy Act Residential Tenancy Act* ("Act"). In addition, the tenant seeks an extension of time to dispute the Notice pursuant to section 66 of the Act.

A dispute resolution hearing was convened on June 10, 2022. In attendance were the tenant, a witness for the tenant (who dialed into the hearing for a few minutes around 10 AM), and four individuals on behalf of the landlord.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Preliminary Issue: Application for Extension of Time to Dispute the Notice

The Notice was issued under section 49(6)(e) of the Act. As per section 49(8) of the Act, a tenant has 30 days in which they may dispute such a notice. If a tenant does not make an application to dispute a notice, then they are presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the effective date indicated on the notice (see section 49(9)).

In this dispute, the tenant testified that he received a copy of the Notice on January 26, 2022. The Notice was posted on the door of the rental unit. He filed his application to dispute the Notice on February 28, 2022—34 days after he received the Notice.

The tenant seeks to extend the time limit of 30 days for him to have his application to dispute the Notice considered.

Section 66(1) of the Act states that an arbitrator “may extend a time limit established by this Act only in exceptional circumstances [. . .]”. *Residential Tenancy Policy Guideline 36. Extending a Time Period,* (version April 2, 2004) explains the following regarding what may be considered “exceptional circumstances” (page 1):

> 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.
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> Some examples of what might not be considered "exceptional" circumstances include:
> • the party who applied late for arbitration was not feeling well
> • the party did not know the applicable law or procedure
> • the party was not paying attention to the correct procedure
> • the party changed his or her mind about filing an application for arbitration
> • the party relied on incorrect information from a friend or relative
>
> 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

In this application, the tenant’s reason for filing his application four days late is that

> I was preparing for a dispute hearing that I had with the landlord this morning and I was distracted. I received a double set of docs and I considered the 2nd delivery which was mailed to me on January 24th. So I would've had enough time to take care of it after the hearing of this morning.

The tenant also testified that he has had previous conflicts with the former building manager and that he was “bombarded with notices almost daily.” This created very distracting circumstances and the tenant had another hearing occurring at the same time. It would be fair to say that the tenant simply found himself unable to keep his affairs organized.

The above-noted policy guideline notes the following criteria that should be applied in an arbitrator's decision regarding an extension of time application on the basis of there being exceptional circumstances (page 1):

> The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:
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> • the party did not wilfully fail to comply with the relevant time limit
> • the party had a bona fide intent to comply with the relevant time limit
> • reasonable and appropriate steps were taken to comply with the relevant time limit
> • the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
> • the party has filed an application which indicates there is merit to the claim
> • the party has brought the application as soon as practical under the circumstances

With respect, I am not persuaded that the tenant's apparent inability to organize paperwork regarding his two applications before the Residential Tenancy Branch to be exceptional circumstances. The tenant presents as articulate, intelligence, and otherwise capable of organizing his documentary evidence, his thoughts, and his presentation. The evidence, both oral and documentary, does not convince me that the tenant's lapse and delay in making his application to dispute the Notice on time falls anywhere near what would be considered exceptional circumstances.

For these reasons, it is my finding that, pursuant to section 66(1) of the Act, I am unable to extend the 30-day time limit in which the tenant was permitted to make an application to dispute the Notice.

As such, pursuant to section 49(9) of the Act the tenant is presumed to have accepted the Notice and must therefore vacate the rental unit.

Having reviewed the Notice it is also my finding that it conforms to, and meets, the form and content requirements under section 52 of the Act.

Pursuant to section 55(1) of the Act the landlord is granted an order of possession. This order of possession is issued in conjunction with this decision to the landlord. The landlord is required to serve a copy of the order of possession on the tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The tenant's application is dismissed, without leave to reapply.

2. The Notice is upheld.

3. The landlord is granted an order of possession of the rental unit.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: June 10, 2022

Residential Tenancy Branch