



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

CNC-MT, FFT

Dispute Codes

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 15, 2021 ("One Month Notice"); for more time to apply to cancel the One Month Notice; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his counsel, K.E. ("Counsel"), and an agent for the Landlord, C.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to more time to apply to cancel the One Month Notice?
- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2014, with a current monthly rent of \$783.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$475.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full.

The Tenant submitted a copy of the One Month Notice, which was signed and dated February 15, 2022, and which has the rental unit address. The One Month Notice was served by attaching a copy to the rental unit door on February 16, 2022, with an effective vacancy date of March 31, 2022. The it was served on the grounds that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

More Time to Apply

The first thing to consider is that the Tenant applied to the RTB to dispute the One Month Notice two weeks too late. He said he received the One Month Notice on February 16, 2022, although it was attached to his door, which is deemed served three days later. As such, the Tenant was deemed served with the One Month Notice on February 19, 2022. Our records indicate that he applied for dispute resolution on March 14, 2022. Section 47 (4) states that a tenant may dispute an eviction notice under this section by applying for dispute resolution within 10 days after the date the tenant receives the notice. As such, the Tenant had until March 1, 2022, to apply for dispute resolution. Accordingly, the Tenant was 14 days late in filing his Application.

Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. Policy Guideline #36, "Extending a Time Period" ("PG #36") assists in interpreting this section of the Act. It defines "Exceptional Circumstances" as follows:

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.

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

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.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- 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

In the hearing, the Tenant noted that the Two Month Notice was attached to his door on February 16th, 2022. He said that upon receiving it, he immediately contacted his accountant, who was out of town. The Tenant submitted a written statement to the RTB explaining why he was late in filing an Application to dispute the One Month Notice, which includes the following:

A receptionist provided him with an address for the Residential Tenancy Branch office, which turned out to be incorrect. [The Tenant] attempted to locate the office twice with no success. Mr. Ferris contacted the [an anti-poverty society] for assistance and was told to phone back the next day. Upon phoning back, he was told he would receive a callback and be provided with assistance, but he never received a phone call. [The Tenant] set up a meeting with his accountant once he returned from vacation. His accountant directed him to [a] law firm, whose services [the Tenant] retained. Upon retaining counsel, it has only taken two business days for this dispute notice to be filed.

Analysis

The One Month Notice has information for tenants about disputing the eviction notice. In bold letters on the third page, it states: “**INFORMATION FOR TENANTS**”, which states the following;

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. .

[emphasis in original]

Further, telephone numbers for the Residential Tenancy Branch are listed in bold at the bottom of this page.

PG #36 provides some examples of what might **not** be considered "exceptional" circumstances include: [emphasis added]

- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party relied on incorrect information from a friend or relative

I infer from the Tenant's explanation of the actions he took before applying for dispute resolution that he did not know what to do; however, if he had read the information provided on the One Month Notice, he would have had everything that he needed to know to dispute this eviction notice.

As a result, I find that the Tenant did not do everything that was reasonable and appropriate in the circumstances to dispute the One Month Notice within the required timeline. I find that the Tenant's conduct – his failure to read the instructions on the One Month Notice - is what caused his late Application, and I find that this is not an exceptional circumstance, which could excuse him for this mistake. I, therefore, find that the Tenant breached section 47 (4) of the Act, which required him to apply for dispute resolution within 10 days after the date the Tenant received the One Month Notice.

Rather, section 47 (5) of the Act states

(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.

Accordingly, I dismiss the Tenant's Application to cancel the One Month Notice,

because he applied for this remedy outside of the deadline set out in section 47 (4) of the Act. I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which was March 31, 2022. As such, I find that the Tenant is overholding in the rental unit, and the Landlord is eligible for an order of possession effective two days after deemed service on the Tenant.

Pursuant to section 62 of the Act, I dismiss the Tenant's Application wholly; and pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit, **effective two days after it is deemed served** to the Tenant.

Conclusion

The Tenant is unsuccessful in his Application, as he applied to cancel the One Month Notice after the required deadline and without an exceptional reason for this late Application. The Tenant's Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 04, 2022

Residential Tenancy Branch