



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on March 28, 2022 for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord and an order extending the time to file an application disputing the Notice issued by the landlord.

The tenant, the tenant's advocate/support worker, the landlord's agent (landlord), and another party, who the landlord submitted could speak for both parties attended the hearing. All parties were affirmed.

The hearing process was explained to the parties.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Issue(s) to be Decided

Should the tenant be granted more time to apply to cancel the landlord's Notice and, if so, should the Notice be cancelled?

Background and Evidence

No evidence was submitted to indicate when this tenancy began, the day of the month when monthly rent was due, or the amount of monthly rent.

The subject of this dispute is the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord to the tenant. The Notice was dated November 15, 2021, and listed an effective move-out date of December 15, 2021. The tenant confirmed receiving the Notice on November 15, 2021. Filed in evidence by the tenant was a copy of the Notice.

The evidence filed by the tenant shows they made an application in dispute of the Notice and a hearing was held on March 14, 2022 on the tenant's application. On March 14, 2022, another arbitrator issued a written Decision dismissing the tenant's application due to insufficient evidence that they served the landlord with the Notice of Hearing application. The other arbitrator dismissed the tenant's application, with leave to reapply, but also informed the tenant that the dismissal did not extend any applicable time limits under the legislation.

Directly thereafter, the tenant filed the current application on March 28, 2022 to dispute the same Notice.

In support of their request to extend the time to file an application in dispute of the Notice, the tenant indicated that the RTB instructed them to reapply.

The landlord and tenant agreed that if I granted the landlord an order of possession (Order), the tenant could remain in the rental unit until 1:00 p.m. on July 31, 2022.

The landlord testified that they have accepted the monthly rent since the Notice was issued, and informed the tenant that it was for use and occupancy only.

Analysis

Based on the documentary and oral evidence provided, and on a balance of probabilities, I find the following.

Section 47 of the Act authorizes a landlord to seek to end a tenancy for cause by providing a tenant with a notice to end tenancy that complies with section 52 of the Act.

The Notice provided information to the tenant, which explained that the tenant had the right to dispute the Notice within 10 days of receiving the document by filing an application for dispute resolution at the Residential Tenancy Branch online, in person at any Service BC Office, or by going to the RTB office in Burnaby in dispute of the Notice.

The Notice also explains that if the tenant did not file an application to dispute the Notice within the required time limit, 10 days, then the tenant is **presumed** to have accepted the end of the tenancy and must move out of the rental unit by the effective date of the Notice. These instructions are provided in section 47(5) of the Act.

In this case, the tenant confirmed receiving the Notice on November 15, 2021, and while she did file an application originally within the required time, that application was dismissed.

Further, as this dispute dealt with the same Notice, the tenant had the same deadline under the Act to file an application to dispute the Notice, which was November 25, 2021, 10 days after receiving it. The Decision dismissing the tenant's first application specifically informed the tenant that any applicable time limit under the legislation (Act) was not extended.

On the day of the hearing, March 14, 2022, the tenant was already beyond the time limit of 10 days to be able to file an application in dispute of the Notice.

Section 66(1) of the Act states that I **must not** extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice, in this case December 15, 2021.

[My emphasis]

For this reason, I **dismiss** the tenant's application for more time to apply to cancel the Notice.

Due to the above, I find the tenant was conclusively presumed to have accepted that the tenancy ended on December 15, 2021, the effective date of the Notice, and I **dismiss** the tenant's application seeking cancellation of the Notice.

The parties agreed that the tenancy could end on July 31, 2022, at 1:00 p.m., rather than within 2 days of service on the tenant.

I find that the landlord is entitled to, and I **grant an order of possession for the rental unit effective at 1:00 p.m. on July 31, 2022.**

The Order must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenant.

Conclusion

The tenant's application is dismissed, without leave to reapply, as I have found that the tenant did not apply to dispute the Notice within the required timeline and as I have dismissed the tenant's application for an order extending the time to file an application disputing the Notice.

The landlord has been issued an order of possession for the rental unit, effective **at 1:00 p.m. on July 31, 2022.**

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 16, 2022

Residential Tenancy Branch