Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated March 18, 2022 (the "One Month Notice") pursuant to section 47; and
- more time to dispute the 10 Day Notice pursuant to section 66.

The Landlord's agent LL attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord called one witness, CS.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that LL and I were the only ones who had called into the hearing.

Preliminary Matter – Correction of Dispute Address

LL confirmed that there is a unit number for the rental unit. I have amended the dispute address accordingly.

Preliminary Matter – Service of Dispute Resolution Documents

LL confirmed the Landlord received the notice of dispute resolution proceeding package and documentary evidence consisting of the One Month Notice, a warning letter from the Landlord dated March 23, 2022, and a copy of the tenancy agreement.

The Landlord did not submit any documentary evidence and relies on oral testimony for this application.

Preliminary Matter – Tenant's Non-Attendance

Rule 7.3 of the Rules of Procedure provides as follows:

> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

LL confirmed that the Landlord seeks an Order of Possession since the Tenant is still residing in the rental unit. As such, I directed that the hearing continue in the absence of the Tenant.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 26, 2021 and is month-to-month. Rent is $600.00 per month due on the first day of each month. The Tenant paid a security deposit of $300.00 which is held by the Landlord.

The rental unit is part of a multi-unit rental property. LL testified that the Tenant brought a dog to the rental unit a couple of weeks after moving in. LL stated that the Landlord discovered the dog in January 2022, following complaints from other tenants.

LL testified that clause 18 of the tenancy agreement prohibits the Tenant from keeping a pet without the Landlord's consent.

LL stated that the Tenant had claimed to be looking after the dog for a friend. LL testified that in March 2022, the Landlord called police to remove the dog, but the police said the Tenant told them the dog was his.

LL confirmed that a copy of the One Month Notice was posted to the Tenant's door on March 18, 2022. The One Month Notice is signed, dated March 18, 2022, and has an effective date of April 30, 2022. The stated reason for the One Month Notice is "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlord called a witness, CS, who works at the rental property. CS confirmed that the Tenant owns a big dog, which CS believed the Tenant had since the Tenant moved into the building. CS testified that he had seen the dog acting "vicious" before.

Analysis

Based on LL's testimony and the Tenant's application which acknowledges that the One Month Notice was "delivered" on March 18, 2022, I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(g) of the Act on March 18, 2022.

Section 47(4) of the Act states that 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.

I note that section 90(c) of the Act deems documents attached to the door to be received on the third day after attaching. However, Residential Tenancy Policy Guideline 12. Service states as follows:

> Deeming provisions should not be relied on to calculate time to respond to service of a document. The date a person receives documents is what is used to calculate time.

In this case, I find the deadline for the Tenant to dispute the One Month Notice was March 28, 2022, or 10 days after March 18, 2022, the date the Tenant actually received the One Month Notice.

Records from the Residential Tenancy Branch indicate that the Tenant applied to dispute the One Month Notice on March 31, 2022. The Tenant also indicated that he was seeking more time to dispute the One Month Notice.

Based on the above, I find the Tenant did not apply to dispute the One Month Notice within the 10-day period under section 47(4).

Sections 66(1) and (3) of the Act state as follows:

> **Director's orders: changing time limits**
> 66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].
> […]
> (3) The director 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.

Residential Tenancy Policy Guideline 36. Extending a Time Period states:

> **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.
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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

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

Since the Tenant did not attend this hearing any did not provide any substantive evidence, I am unable to conclude on a balance of probabilities that there were “exceptional circumstances” to warrant an extension of time under section 66(1). Accordingly, I decline to extend the time limit for the Tenant to dispute the One Month Notice.

Section 47(5) of the Act states that 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.

Having declined to extend the time limit for the Tenant to dispute the One Month Notice and having found that the Tenant has not made an application for dispute resolution by March 28, 2022, the deadline required under section 47(4), I find the Tenant is conclusively presumed to have accepted that the tenancy ends on April 30, 2022, the effective date of the One Month Notice.

In reaching this conclusion, I am mindful of the decision in *M.B.B. v. Affordable Housing Charitable Association*, 2018 BCSC 2418, in which the Supreme Court of British Columbia held that if a tenant fails to attend a hearing on an application to cancel a notice of eviction, an arbitrator cannot dismiss the tenant's application without considering whether the statutory grounds for the eviction have been met (see paras. 26 and 27).

However, I find the present situation is different from the above case because the tenant in *M.B.B.* had applied to dispute the notice of eviction within the statutory time limit. In this case, the Tenant has not applied to dispute the One Month Notice within the time limit under section 47(4) and is conclusively presumed to have accepted the One Month Notice under section 47(5).

Accordingly, I dismiss the Tenant's application to dispute the One Month Notice on the basis of conclusive presumption under section 47(5).

Section 55(1) of the Act states:

> **Order of possession for the landlord**
> 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act states:

> **Form and content of notice to end tenancy**
> 52 In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

> (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
> (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the One Month Notice and find that it complies with the requirements of section 52 in form and content. As noted above, the Tenant's application to dispute the One Month Notice is dismissed on the basis of conclusive presumption.

I find that the Landlord is entitled to an Order of Possession under section 55(1) of the Act. Since the effective date of the One Month Notice has already passed, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 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: August 09, 2022

Residential Tenancy Branch