



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC-MT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants’ Application for Dispute Resolution Proceedings Package and stated she had no issues with timely service of documents.

Issue(s) to be Decided

Has the tenant provided sufficient exceptional circumstances to allow me to extend the time to dispute the landlord’s notice to end tenancy?

Should the notice to end tenancy be upheld or cancelled?

Background and Evidence

The tenant did not attend to present any evidence regarding the merits of his application for me to consider.

The landlord testified that she personally served the tenant with the 1 Month Notice to End Tenancy for Cause on May 11, 2022 at approximately 11:00 a.m. or noon. She tried to give the tenant as much notice as possible that she was seeking to end the tenancy.

A copy of the notice to end tenancy was provided as evidence by the tenant.

Analysis

Based on the undisputed testimony from the landlord, I am satisfied the tenant was duly served with the 1 Month Notice to End Tenancy for Cause on May 11, 2022, in accordance with sections 88 and 90 of the Act. Section 47(4) provides that a tenant must dispute a notice to end tenancy by making an application within 10 days after the tenant receives the notice.

The Residential Tenancy Branch rules of procedure state that if the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday. The last day to file the dispute fell on a Victoria Day holiday, Monday, May 23rd, making the last day to file the dispute Tuesday, May 24th. The tenant filed his application to dispute the notice to end tenancy the next day, on Wednesday, May 25th, outside the 10 days after receiving the notice in accordance with section 47(4) of the Act.

The tenant did not attend this hearing to provide me with any exceptional circumstances that would allow me to extend the time to file his application to dispute the notice to end tenancy. As such, pursuant to section 47(5), I find the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the unit. The tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1), if a tenant makes an application 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 the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have reviewed the 1 Month Notice to End Tenancy for Cause provided, and I find that it complies with the form and content provisions as set out in section 52 of the Act. As the

effective date stated in the landlord's notice to end tenancy has passed, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: October 03, 2022

Residential Tenancy Branch