



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dewdney Villas; More Than A Roof Mennonite
Housing and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

On July 31, 2022 the Tenant applied for dispute resolution for a cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). On this Application, they required more time to dispute the One-Month Notice the Landlord issued on June 30, 2022.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 13, 2022.

Preliminary Matter –disclosure of evidence

At the start of the hearing, the Tenant stated they did not serve documents they prepared as evidence for this hearing to the Landlord.

The *Residential Tenancy Branch Rules of Procedure* are set out to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. Rule 3.1 provides that an applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available to them, serve to the other party any other evidence they submitted with their Application. The only exception to this is if the party claims with proof that evidence was not available to them at the time their application was made.

The Tenant did not do so here. I do not accept this evidence as late due to unforeseen circumstances, and I give the documents sent by the Tenant for this hearing any consideration herein. The Tenant did not provide this evidence to the Landlord in a

timely manner and any consideration from me as the Arbitrator would be prejudicial to the Landlord.

Conversely, the Landlord provided evidence that they provided their evidence to the Tenant on September 2, in person, with additional information to the Tenant on September 3. This was not less than seven days before the hearing, as confirmed by the Tenant in the hearing. Because the Landlord complied with the timeline for service of their evidence, I give the Landlord's evidence full consideration in this hearing.

Issue(s) to be Decided

Is the Tenant entitled to more time in which to file an Application for Dispute Resolution, pursuant to s. 66 of the *Act*?

Is the Tenant entitled to an order that the landlord cancel the One-Month Notice?

Is the Landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The Landlord provided a copy of an initial One-Month Notice, served on May 30, 2022, with the scheduled end-of-tenancy date for July 31, 2022. In the hearing the Landlord stated this One-Month Notice was rescinded, on June 30, 2022, because the Tenant felt the Landlord did not issue that document properly.

The Landlord then issued another One-Month Notice also on June 30, providing the end-of-tenancy date as August 31, 2022. The Landlord provided a Proof of Service document attesting to their service of the One-Month Notice on June 30, 2022 at 1:00pm. A photo accompanying the document shows the envelope attached to the Tenant's door. The Landlord provided that they observed the One-Month Notice was removed from the Tenant's door on that same date, when they visited another building resident a couple of hours later around 3:00pm.

In the hearing, the Tenant presented that they notified the Landlord they would be out of town for a number of weeks. Upon their return, they suffered a couple of seizures prompting a stay in the hospital. They submit they first received the notice after the 10-day timeframe granted in which they could apply for dispute resolution. Earlier, they had communication with the Landlord about getting the One-Month Notice re-served, “without changing the notice date, just to apply for this dispute hearing.” They submit they did not receive the notice until July 14 or later in the month, with the Tenant’s return being on “10th or 11th of July”, then a hospital stay from the July 12 to July 14.

Analysis

The *Act* s. 47(1) states that a landlord may end a tenancy if any of the certain categories apply. Three of the conditions listed are those indicated by the Landlord here on the One-Month Notice: where the tenant significantly interfered with/unreasonably disturbed others; seriously jeopardized the health/safety/lawful right of others; or put the landlord’s property at significant risk.

The *Act* s. 47(4) states that within 10 days of receiving it, a tenant may dispute the One-Month Notice by making an application for dispute resolution.

In regard to the Tenant’s request to file the Application after the dispute period, the *Act* s. 66(1) provides “The director may extend a time limit established by this Act only in exceptional circumstances.”

In these circumstances, I find that exceptional circumstances for the Tenant are not proven in their testimony. Therefore, I find the Tenant is not entitled to more time to dispute the One-Month Notice.

I find the Landlord completed service as indicated on June 30, 2022 at 1pm. I accept the Landlord’s testimony and find as fact that they observed the One-Month Notice was gone from the Tenant’s door by 3pm. I find it more likely than not that the Tenant removed the posted notice from the door at that time before they were away from the rental unit for some time. To be clear: I find the Landlord served the Tenant on June 30, and the Tenant knew about the time limit from that time forward.

I find the Tenant returning to their area, then having to be admitted to the hospital, occurred after the 10-day time limit was over. Their subsequent stay in a hospital is immaterial and occurred after the fact. The Tenant provided no other explanation on

why they did not apply to dispute resolution within the initial 10-day period. Further, there was no explanation on why they did not apply until July 31, 2022 which is a two-week timeframe *after* they stated they received the document.

Further, with this being a matter of urgency, the Tenant did not present that they attempted to make other arrangements to attend to applying for this hearing. This was despite their plea with the Landlord – as stated in the hearing – that they wished to dispute the Landlord's desire to end the tenancy. This being a matter of a possible end to their tenancy should have taken precedence in the circumstances when they were away from the rental unit. I find there were not exceptional circumstances barring their mobility or seeking other resources online to assist in applying for this hearing.

The Landlord issued the One-Month Notice on June 30, 2022 and served it to the Tenant on that same date, and I find the Tenant retrieved the document on that date. The Tenant failed to apply for dispute resolution within the specified time limit of 10 days after they received it. I find the Tenant is not entitled to more time.

For these reasons, I dismiss the Tenant's Application to cancel the One-Month Notice. The tenancy is ending. This is an application of s. 47(5) of the *Act* which provides that where a tenant does not make an application within 10 days, they are conclusively presumed to have accepted the tenancy will end.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

Here, I find the One-Month Notice complies with the requirements of form and content. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the ground for ending the tenancy, and is in the approved form. For this reason, the Landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **October 15, 2022 at 1:00 p.m.** I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 3, 2022

Residential Tenancy Branch