Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VAN-EAST INVESTORS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC – MT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a One Month Notice to End Tenancy for Cause ("1 Month Notice") and more time to make the application.

The landlord's agent and one of the co-tenants appeared at the hearing and were affirmed. The tenant was also assisted by an Advocate; a family member who translated for the tenant; and, a settlement worker who appeared to provide witness testimony.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Service

I explored service of hearing materials upon each other. Both parties confirmed receipt of the materials of the other party and did not raise any issues with respect to service.

2. Naming of parties

In filing the Application for Dispute Resolution, the tenants identified the landlord as being the name of the building or operating name. I amended the style of cause to reflect the corporate landlord's name, as recorded on the 1 Month Notice and the tenancy agreement before me.

In filing the Application for Dispute Resolution, four co-tenants were named; however, I noted that there were only two co-tenants identified on the tenancy agreement and the 1 Month Notice. I determined the tenants had included the names of their children, who are identified as occupants on the tenancy agreement but not tenants. I amended the application to exclude the names of the tenants' children.

3. Request for extension

The tenants had requested an extension of time to make this Application for Dispute Resolution as they had filed outside of the time limit for disputing a 1 Month Notice.

Below, I have summarized the relevant facts and submissions before me.

The landlord posted the subject 1 Month Notice to the door of the rental unit on July 25, 2022 with a stated effective date of August 31, 2022. The tenant confirmed receiving the 1 Month Notice on or about July 25, 2022 although she could not recall the exact date.

A tenant in receipt of a 1 Month Notice has 10 days to file an Application for Dispute Resolution to dispute the Notice. The tenant's Application for Dispute Resolution was filed approximately one month after receiving it, on August 26, 2022.

Section 66 of the Act permits the Director, as delegated to an Arbitrator, to extend a time limit in limited circumstances, as provided below:

> **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]*.
>
> (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:
>
> (a)the extension is agreed to by the landlord;
>
> (b)the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

> (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.

The Application for Dispute Resolution before me was filed before the effective date of the subject 1 Month Notice. Accordingly, in keeping with section 66(1), in order to permit an extension, I must be satisfied that "exceptional circumstances" prevented the tenants from filing within time.

Residential Tenancy Policy Guideline 36 provides information and policy statements with respect to extending time limits due to exceptional circumstances, as reproduced below:

> *The Residential Tenancy Act and the Manufactured Home Park Tenancy Act provide that an arbitrator may extend or modify a time limit established by these Acts only in exceptional circumstances. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.*
>
> ***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

I asked the tenant, what they did upon receiving the 1 Month Notice. The tenant responded that they asked the settlement worker to translate it.

The tenant's Advocate argued that the tenants were late in filing their Application for Dispute Resolution because they use a "settlement worker" to complete formal paperwork and there is a language barrier.

The settlement worker testified that in early August 2022 the male tenant and the settlement worker saw each other in the park, while the settlement worker was there with his child. According to the settlement worker, the male tenant indicated to him in the park that they were having issues with their landlord. The settlement worker suggested the tenant call him at his office. On August 4, 2022 the male tenant tried calling the settlement worker at his office but the settlement worker was not available. The tenant tried calling the settlement worker again on August 21, 2022 but the settlement worker was not available. The settlement worker testified that he had been very busy dealing with the influx of Ukrainian refugees at that time. On August 23, 2022

the tenant came into the settlement worker's office and they created a BCid for the tenants but the tenant did not have all of the paperwork so the tenant returned to the settlement worker's office on August 26, 2022 and the Application for Dispute Resolution was filed. The settlement worker stated that he was aware the tenants were filing their Application for Dispute Resolution late but that he told the tenant they would give it a try.

In completing the Application for Dispute Resolution, the only reason(s) provided for filing late was "Although we received the notice, it was our 1st ever in Canada and we were hoping to solve it amicably"

Given the lack of timely response from the settlement worker, I asked the tenant the reason they did not turn to someone else to translate the 1 Month Notice. The tenant responded that they tried but that they could not find anyone else.

I noted the tenant was in the presence of a "family member" who was translating for the tenant during the hearing and spoke English very well. I asked the reason this family member could not have translated the 1 Month Notice for the tenants. In response, the translator said she did try to speak to the landlord but the landlord would not speak with her. The family member stated that she could tell the issue was serious and she urged the tenant to ask someone familiar with the law to help them.

The tenant's Advocate stated that the settlement worker reached out to her after the Application for Dispute Resolution was filed.

The landlord's agent testified that she was very surprised the tenant was using a translator at this hearing because she has spoken to the tenants several times, in English, and that the tenants' English was quite good.

The landlord's agent acknowledged that someone other than the tenants tried speaking with her about the issues with the tenants but the landlord considers such information to be confidential and she could not speak to someone other than the tenants without their authorization.

I turned to the tenant and asked why she did not attempt to contact the landlord about the 1 Month Notice. The tenant indicated that she did try communicating with the landlord's agent by sending her text messages. The tenant had the text messages on her phone and the tenant's Advocate was willing to read some of the messages. I

permitted the tenants' Advocate to read some of the August 17, 2022 text messages aloud and I admitted it as oral evidence.

On August 17, 2022 was a text message from the tenant to the landlord's agent asking why they had to "move away".

I note that the text message, while not written in perfect English, appears to be sufficient to convey the message or question being asked. The tenant responded that she has a neighbour that helps her write text messages.

The tenant testified that they have been residing in Canada for approximately five years and that they cannot move out any time soon as they have no where to go, or the funds to do so, as her husband is the only one working. The tenant suggested that they did not have any issues until property management changed to the current landlord's agent and that the landlord's agent may be discriminating against them.

The landlord's agent responded that she took over property management two years prior and that there were notices given to the tenants before she took over. Also, she has given several warning letters to the tenants and she was left with no other option but to issue the 1 Month Notice.

The tenant's Advocate argued that the landlord's evidence concerning disturbances of other tenants does not rise to the level required to end the tenancy.

In ending the teleconference call, I informed the parties that I would reserve my decision regarding the tenants' request for extension and that if an extension is granted I would reconvene the hearing and I would hear the reasons and evidence for issuance of the 1 Month Notice; however, if the extension is not granted I would consider issuance of an Order of Possession to the landlord.

In the event I were to issue Order of Possession, I canvassed the parties for input with respect to a reasonable effective date. The landlord requested an Order of Possession effective on November 30, 2022. The tenant stated they have children, no where else to go, and that only the male tenant or the tenant's husband is currently working. The tenant suggested that an effective date of February 1, 2023 would be more reasonable.

Issue(s) to be Decided

1. Did the tenants establish that “exceptional circumstances” prevented them from filing to dispute the 1 Month notice within the time limit for doing so?
2. Did the landlord issue a valid and enforceable 1 Month Notice?
3. Is the landlord entitled to an Order of Possession?

Background and Evidence

Pursuant to the written tenancy agreement before me, the tenancy started on July 1, 2017. There is a notation in the tenancy agreement that in 2022 the tenancy agreement was “updated” to reflect the names of the tenant’s two children residing in the rental unit.

On July 25, 2022 the landlord posted the subject 1 Month Notice to the door of the rental unit. The 1 Month Notice has a stated effective date of August 31, 2022.

The 1 Month Notice is in the approved form, is duly completed and signed by the landlord’s agent. On the second page, the 1 Month Notice indicates the reasons for ending the tenancy are:

- Tenant or a person permitted on the property has:
    - Significantly interfered with or unreasonably disturbed another occupant or the landlord
    - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Cause section of the 1 Month Notice, the landlord wrote:

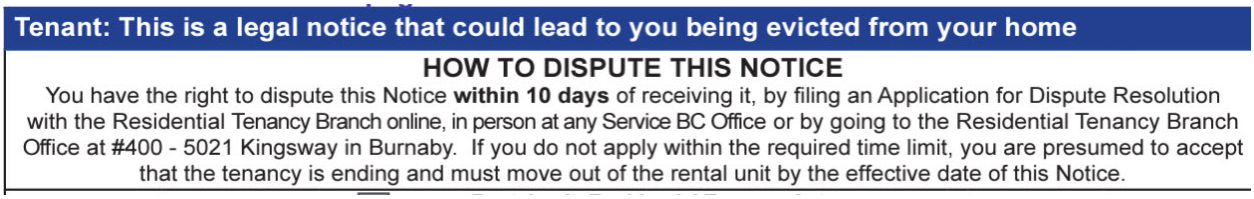
> *Unreasonably disturbed another occupant or the landlord by not supervising their children and letting them run and play in hallways and common area causing disturbances to the tenants and damages to Landlord property.*
>
> *Non-compliance even notices of disturbance were given to tenants multiple times.*
>
> *Tenants also do not maintain reasonable cleanliness and sanitary standard required by their Tenancy Agreement causing damages to their unit and attracting mice and other pests.*
>
> *As a result of continued negligence, resulting that other Tenants and the Landlord are constantly disturbed and that is against your Tenancy Agreement (health, peace and quiet section). After multiple notices and conversations with the tenants without any improvements, this is the final notice to move out of the unit* [unit number omitted by me for privacy purposes] *by August 31, 2022.*

Analysis

Upon considering everything before me, I provide the following findings and reasons.

In filing the Application for Dispute Resolution, the tenants uploaded a copy of the 1 Month Notice they received from the landlord. I note that the tenants uploaded a copy of all three pages they received. The 1 Month Notice is in the approved form and all sections of the notice are duly completed.

The 1 Month Notice served to the tenants provides, near the top of the first page, the following caution:



Tenant: This is a legal notice that could lead to you being evicted from your home

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

On the last page of the 1 Month Notice is further information, including 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.

For More Information: www.gov.bc.ca/landlordtenant
Public Information Lines: 1-800-665-8779 (toll-free) Greater Vancouver: 604-660-1020 Victoria: 250-387-1602
This is page 3 of a 3-page Notice. The landlord must sign page one of this Notice and must give the tenant every page.

During the hearing, the tenants' Advocate argued that a language barrier prevented the tenants from filing their Application for Dispute Resolution within time. I accept the tenant's testimony that her first or primarily language is other than English considering the tenant testified they came to Canada approximately five years ago and I could hear the tenant communicating with her "family member" in another language during the hearing; however, I take notice that many tenants in this province primarily speak and read a language other then English and I find that having a first or primary language other than English is not uncommon or "exceptional". Further, I find I was provided conflicting, incomplete and non-pervasive evidence that a language barrier prevented the tenants from filing their Application for Dispute Resolution within time considering the following factors:

- In seeking an extension of time to dispute a notice to end tenancy on the Application for Dispute Resolution, applicants are prompted to provide reason(s) why the application is being filed late. In response to the prompt, the tenants wrote: "Although we received the notice, it was our 1st ever in Canada and we were hoping to solve it amicably". There is no mention of a language barrier here.
- I was provided testimony from the landlord's agent that she has spoken with the tenants on several occasions, in English, and the landlord's agent found their English to be quite good.

- Text messages exchanged between the tenant and the landlord's agent were also in English, or at least an attempt at writing English phonetically, but when the Advocate read the messages aloud, I found it sufficiently conveyed the message or question being asked.
- The tenant has a family member who can translate for them. The family member testified that the tenant did seek the family member's assistance after receiving the 1 Month Notice, explaining that she reached out to the landlord.
- The tenant stated she has a neighbour that also assists her with written English.
- It is apparent to me the tenant understood the landlord was seeking to end the tenancy based on the text message written by the tenant on August 17, 2022.
- There were no submissions before me that the male tenant or tenant's husband does not read English.

The tenant testified that upon receiving the 1 Month Notice she had asked the settlement worker to translate it for her; however, I reject that testimony as being accurate. The settlement worker testified that the male tenant or tenant's husband approached him in the park in early August 2022, while the settlement worker was there with his child, and the tenant indicated that they were having problems with the landlord. The tenant called the settlement worker twice in August 2022 prior to bringing the 1 Month Notice to the settlement worker on August 26, 2022. I find it difficult to believe that the tenants did not understand they were facing eviction prior to meeting the settlement worker and bringing him the 1 Month Notice on August 26, 2022 since they had attempted to communicate with him three times prior to the meeting.

I find it more likely than not that the reason(s) for filing late are due to being unfamiliar with the process, as reflected in the tenant's statement on the Application for Dispute Resolution "Although we received the notice, it was our 1st ever in Canada" and the tenants attempted to resolve the dispute by dealing with the landlord as reflected in the tenant's statement on the Application for Dispute Resolution "we were hoping to solve it amicably".

I find the tenants hope or desire to resolve the dispute with the landlord, amicably, is also consistent with the family members attempt to reach out to the landlord and the tenant's text messages to the landlord's agent on August 17, 2022. Unfortunately, no such resolution was reached with the landlord and the time for disputing the 1 Month Notice lapsed.

As provided in the policy guideline, an extension of time will not be granted where:

- *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 tenants' Advocate argued that the tenants use the settlement worker to complete formal paperwork and he was unavailable to meet with the tenants prior to August 23, 2022; however, in filing the Application for Dispute Resolution and providing reasons for filing late, the tenants did not indicate that an inability to meet with the settlement worker in a timely manner was the reason for filing late. Rather, this reason was not provided until the hearing and after the tenants began working with the Advocate and I find I am not compelled by the change in reasons. Further, considering the tenants have been in Canada for approximately five years, having found the tenants have some ability to communicate in English and/or have access to translators other than the settlement worker, and the tenants have access to Information Officers at the Residential Tenancy Branch, I am unsatisfied the tenants were without any other way to pursue an Application for Dispute Resolution without the assistance of the settlement worker.

In light of all of the above, I find I am unsatisfied "exceptional circumstances" prevented the tenants from filing to dispute the 1 Month Notice within the time limit for doing so and I deny the request for extension. As such, I find the tenants filed outside of the time limit for doing so and I dismiss their Application for Dispute Resolution.

Under section 55(1) of the Act, I must provide the landlord an Order of Possession, as follows:

> **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.

In this case, I have dismissed the tenant's application to cancel the 1 Month Notice. Having reviewed the 1 Month Notice served to the tenants, I find it is in the approved

form, and is duly completed, including reasons for ending the tenancy. The Details of Cause on the 1 Month Notice is completed and points to repeated disturbances of other occupants of the property. Being repeatedly disturbed is a basis for breaching a tenant's right to quiet enjoyment. As such, where a tenant's right to quiet enjoyment is breached by the actions or negligence of another tenant, the landlord's recourse is to take action to cease the offending tenant's actions or negligence, including the eviction of the offending tenant. Accordingly, I find the 1 Month Notice meets the form and content requirements of section 52 of the Act and I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

As for the Advocate's argument that the landlord's evidence concerning disturbances does not rise to the level required to end a tenancy, the Act provides a tenant the opportunity to challenge the landlord's reasons and evidence by filing to dispute the Notice to End Tenancy within the time limit or doing so. However, failure to file to dispute the 1 Month Notice has significant consequences that apply in this case, as provided under section 47(5) of the Act:

> (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.

[My emphasis underlined]

During the hearing, the landlord requested an Order of Possession effective on November 30, 2022. The tenant requested more time to vacate, taking into consideration the tenants have children, have no where else to go, and the male tenant or tenant's husband is the only tenant currently working. Given the date of this decision, and all of these considerations, I find it reasonable to provide the landlord an Order of Possession effective at 1:00 p.m. on December 31, 2022.

The tenants remain obligated to pay rent to the landlord until December 31, 2022.

Conclusion

The tenants' request for an extension is denied and the tenants' Application for Dispute Resolution is dismissed.

The landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2022.

The tenants remain obligated to pay the landlord rent up until December 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*.

Dated: November 23, 2022

Residential Tenancy Branch