



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ladkeen Canada Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M-MT, RR, LRE, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- More time to file an application for cancellation of the landlord's Four Month Notice to End Tenancy for demolition, renovation or conversion ("Four Month Notice") pursuant to section 49.2 of the Act
- For an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with MK appearing as the landlord's agent, along with a witness BR and counsel XY. The tenant CM appeared for herself.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of each other's materials for this application. Service for both parties complies with sections 88 and 89 of the Act.

Preliminary Issue

Rule 2.3 of the RTB Rules of Procedure states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.” This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The tenant applied for several other orders in addition to cancellation of the Four Month Notice. These issues are not related to the dispute of the Four Month Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Did the tenant file her dispute notice within the legislated time frame? If not do exceptional circumstances apply to extend the filing deadline?
2. Is the Four Month Notice valid and enforceable against the tenant?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

Service of the Four Month Notice

The tenant confirmed that on April 14, 2022 she took personal receipt of the Four Month Notice dated April 12, 2022, with an effective date of August 31, 2022. She noted that her last name on the Four Month Notice was not correct and informed the landlord.

On May 6, 2022 the landlord then provided the tenant with the first two pages of the Four Month Notice, with the correct name. The effective date on the notice remained August 31, 2022.

The landlord stated that they did not serve an entirely new Four Month Notice on the tenant on May 6, 2022 as they were of the position that service took place on April 12, 2022 and they only replaced the pages with the name change on May 6, 2022.

The tenant argued that the first Four Month Notice was cancelled by the landlord and that the landlord was required to serve her with a completely new Four Month Notice.

Application for Dispute Resolution

The tenant stated that she filed her application for dispute resolution on August 24, 2022. She stated that she filed it on that date because she alleged that she had not been properly served with the Four Month Notice.

Analysis

Section 52 of the Act requires that a notice given under the Act meet certain form and content requirements. It must be signed by the landlord, give the address of the rental unit, state the effective day of the notice and the grounds for ending the tenancy. It also must be on the approved form. The Four Month Notice meets these requirements, and it was personally handed to the tenant on April 14, 2022. The first name of the tenant on the Four Month Notice was correct, the tenant's last name was in error. However, the correct address of the rental unit was listed on the notice as were the grounds. Based on the evidence of both parties, I find that the tenant understood that the Four Month Notice was in respect of her rental unit, and there had been an error in the name on the Four Month Notice.

The landlord by providing the corrected first two pages did not cancel the original notice, just corrected an error. No changes were made to the form other than the last name of the tenant. The tenant received all the information required by section 52 of the Act on April 14, 2022. The tenant was required to file her dispute notice within 30 days of April 14, 2022. The tenant did not file her dispute notice until August 24, 2022, which was outside the legislated deadline.

Section 36 of the RTB Policy Guidelines states:

*The Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts ***only in 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.

I find that the tenant is truthful when she states that she didn't file a dispute notice in time because she didn't feel that she was properly served. However, her concern about lack of proper service cannot be considered an exceptional circumstance. If service was improper and she wished to dispute the Four Month Notice on that basis or any other basis, an application for dispute resolution must be filed within the legislated time frame.

As the tenant did not file her application within the legislated time frame, her application is dismissed. Based on section 55(1.1) of the Act, the landlord is therefore entitled to an order of possession for the rental unit.

As the tenant was unsuccessful in her application, she is not entitled to recover her filing fee.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 28, 2022

Residential Tenancy Branch