



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ-MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the "Notice"), pursuant to section 49.1.

The tenant, the landlord's manager (the "manager") and the landlord's president (the "president") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Amendment

The manager was named as the landlord in this application for dispute resolution. The manager testified to the correct name of the landlord. Both parties agreed to amend the tenant's application for dispute resolution to correctly name the landlord. Pursuant to section 64 of the *Act*, I so amend.

Preliminary Issue- Service

The tenant testified, and the manager confirmed, that the tenant served the landlord with the tenant's application for dispute resolution. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. The tenant testified that they did not serve evidence on the landlord or the Residential Tenancy Branch. I find that the landlord was served with the tenant's application for dispute

resolution in accordance with the *Act*. I find that tenant was served with the landlord's evidence in accordance with the *Act*. I find that the tenant did not submit any documentary evidence for consideration.

Issues to be Decided

1. Is the tenant entitled to more time to cancel the Notice, pursuant to section 66 of the *Act*?
2. Is the tenant entitled cancellation of the Notice, pursuant to section 49.1 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2015. Monthly rent geared to income in the amount of \$466.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. A rent geared to income written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenancy agreement, at section 7(a)(i) states:

"BC Housing" means British Columbia Housing Management Commission;

The tenancy agreement, at section 8 states:

The landlord has entered into an agreement with BC Housing designating the residential property as housing for low and/or moderate income tenants.

The tenancy agreement, a section 10(b) states:

The amount of rent payable from time to time will be determined on the basis of 30% of the tenant's and occupant's gross monthly household income or such other percentage as shall be determined by applying the applicable BC Rent Scale, or such other rent scale as the landlord may determine from time to time.

The landlord will give to the tenant notice of the amount of such rent payable prior to the date this tenancy starts. Any change in the rent will be determined in accordance with section 10(c) and is not subject to the RTA. The tenant acknowledges the landlord has selected the tenant on a number of criteria, including the income and assets of the tenant and occupants, and that any change in the income or assets of the tenant or occupants is material and of great importance to the landlord.

Section 36(a) of the tenancy agreement states:

A breach of this tenancy agreement by the tenant may give the landlord the right to end the tenancy and claim damages in accordance with the RTA.

The landlord testified that the Notice was posted on the tenant's door on July 4, 2022. The landlord entered into evidence a witnessed proof of service document stating same. The tenant testified that she couldn't tell me when she received the Notice, but the date provided by the landlord sounds right.

The Notice was entered into evidence, is signed by the landlord, is dated July 4, 2022, gives the address of the rental unit, states that the effective date of the notice is September 30, 2022, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

The tenant no longer qualifies for the subsidized rental unit.

The tenant failed to dispute the Notice on September 27, 2022. The manager testified that the tenant failed to dispute the Notice after the allowable time period.

The tenant testified that she failed to dispute the Notice late because she had hoped to come to a resolution with the landlord and was sick with COVID shortly after she received the Notice.

The tenant did not enter into evidence any documentary proof of an illness that prevented her from filing to dispute the Notice within 15 days of its receipt.

The manager testified that the landlord is funded by the government of British Columbia through B.C. Housing. This testimony was not disputed by the tenant.

The manager testified that if the landlord is successful in this application for dispute resolution, they are seeking an Order of Possession effective January 31, 2023.

Analysis

Based on the testimony of both parties and the proof of service document entered into evidence, I find that the Notice was posted on the tenant's door on July 4, 2022 and the tenant was deemed served with the Notice on July 7, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49.1 of the *Act* states:

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4)A notice under this section must comply with section 52.

(5)A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.

Section 2 and 3.1 of the Residential Tenancy Regulation state:

2 Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income:

(a)the British Columbia Housing Management Commission;

(b)the Canada Mortgage and Housing Corporation;

(c)the City of Vancouver;

(d)the City of Vancouver Public Housing Corporation;

(e)Metro Vancouver Housing Corporation;

(f)the Capital Region Housing Corporation;

(g)any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

(i)the government of British Columbia;

(ii)the British Columbia Housing Management Commission;

(iii)the Canada Mortgage and Housing Corporation;

(iv)a municipality;

(v)a regional district;

(h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

Public housing bodies

3.1 The persons and organizations set out in section 2 (a) to (h) of this regulation are prescribed as public housing bodies for the purposes of section 49.1 of the *Act*.

Based on the manager's undisputed testimony and sections 7-8 of the tenancy agreement, I find that the landlord receives funding from the British Columbia Housing Management Commission and pursuant to section 3.1 of the Regulation, meets the definition of a public housing body.

Based on the manager's undisputed testimony and section 10 of the tenancy agreement, I find that the subject rental property is a subsidized rental unit as defined by section 49.1 of the *Act*.

Based on sections 10 and 36 of the tenancy agreement, I find that the tenancy agreement provides that the landlord may end the tenancy if the tenant ceases to qualify for the rental unit.

Pursuant to my above findings, I find that the landlord was permitted to serve the tenant with the Notice, in accordance with section 49.1(2) of the *Act*.

Pursuant to section 49.1(5) of the *Act*, the tenant had 15 days after receipt of the Notice to dispute it. 15 days from July 7, 2022 was July 22, 2022. I find that the tenant failed to dispute the Notice within the timeframe set out in section 49(5) of the *Act*.

The tenant has sought an extension to the 15 day time limit set out in the *Act*, pursuant to section 66 of the *Act*.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this *Act* only in exceptional circumstances. Policy Guideline #36 states:

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.

The tenant did not provide any documentary evidence to support her testimony that she was too ill to file to dispute the Notice. As stated above, a "reason" without any force of persuasion is merely an excuse. I find that the tenant has not proved, on a balance of probabilities, that she was too ill to file to dispute the Notice.

The tenant testified that she also filed late because she hoped to come to a resolution with the landlord. I find that a misguided hope of reaching a resolution with the landlord is not an exceptional circumstance under section 66 of the *Act*.

Pursuant to my above findings, I dismiss the tenant's application for more time to file to dispute the Notice.

Pursuant to section 49.1(6) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being September 30, 2022 because the tenant did not file to dispute the Notice within 15 days of its receipt. The tenant's application for dispute resolution is therefore dismissed without leave to reapply.

I find that the landlord would normally be awarded a two-day Order of Possession pursuant to section 55 of the *Act* and my above findings; however, because the landlord has agreed to an extension of the effective date of the Order of Possession, I award the landlord an Order of Possession effective January 31, 2023 at 1:00 p.m.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 31, 2023**, which should be served on the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 09, 2022

Residential Tenancy Branch