



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAMLOOPS NATIVE HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: CNC-MT, OLC
 LL: OPC, OPN

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on September 29, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- An order cancelling a One Month Notice for Cause dated August 8, 2022 (the “One Month Notice”);
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice; and
- an order that the Landlord comply with the Act.

The Landlord’s Application for Dispute Resolution was made on December 1, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on the One Month Notice; and
- an order of possession based on the Tenant’s notice to end tenancy.

The Tenant and the Landlord’s Agents E.R. and J.J. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed receipt of their respective Applications and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

At the start of the hearing, the Landlord's Agents clarified that they had claimed for an order of possession based on the Tenant's notice to end tenancy in error. As such, the claim was withdrawn. The Landlord's Agents stated that they wish to pursue their claim for an order of possession based on the One Month Notice.

During the hearing the Tenant stated that the parties had a previous hearing which related to the same issues which were noted on the One Month Notice. The Tenant provided the previous hearing file number which has been recorded on the cover page of this decision. Upon review, it appears as though the file number relates to the Landlord's previous application for an early end to the tenancy. I note that the previous decision dated November 14, 2022 indicated that;

"Although the One Month Notice was provided as part of the landlord's evidence package, it was not the subject of this hearing and I make no findings in respect of the One Month Notice."

I find that the validity of the One Month Notice has not yet been decided, as such the hearing continued. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling a One Month, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice, pursuant to Section 66 of the *Act*?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, pursuant to Section 62 of the *Act*?
4. Is the Landlord entitled to an order of possession in relation to the One Month Notice, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 1, 2013. Currently, the Tenant is required to pay rent in the amount of \$558.00 which is due to the Landlord on the first day of each month. The Tenant was not required to pay any deposits. The Tenant continues to occupy the rental unit.

The Landlord's Agents stated that they served the Tenant with the One Month Notice on August 8, 2022 with an effective vacancy date of September 30, 2022, by Canada Post Registered Mail on August 8, 2022. The Landlord provided a copy of the receipt in support. The Tenant confirmed having received the One Month Notice on August 12, 2022. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"Tenant or person permitted on the property by the tenant has put the Landlord's property at significant risk"

"The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardized the lawful right or interest of another occupant or Landlord."

"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlord's Agents stated that the One Notice was served in relation to a shooting incident that took place at the rental property. The Landlord's Agents stated that there has been a long history of complaints and police attendance at the rental property. The Landlord's Agents stated that the Tenant has been cautioned on several occasions regarding neighbours' complaints about noise and concerns for their safety. The Landlord's Agents stated that on August 6, 2022 the Tenant's daughter was shot by an individual who attended the rental property. The Landlord's Agents also stated that the Tenant has been cautioned regarding excessive clutter at the rental property.

The Tenant confirmed having received the One Month Notice on August 12, 2022. The Tenant stated that they submitted their Application to cancel the One Month Notice on September 29, 2022. The Tenant is applying for more time to cancel the One Month Notice. The Tenant stated that they were unable to submit their Application any sooner, given they were pre occupied with their daughter's health after the shooting.

The Tenant confirmed that there had been issues at the rental unit while the Tenant's daughter was residing at the rental unit. The Tenant stated that her daughter's friends caused Police presence at the rental property. The Tenant stated that the Police arrested a person that the Tenant's daughter was seeing at the time, who they believe is responsible for the shooting. The Tenant stated that her daughter no longer resides at the rental unit, therefore, there should be no further issues. The Tenant stated that she is working on cleaning up the clutter on the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Landlord served the One Month Notice by Canada Post Registered Mail on August 8, 2022. The Tenant confirmed that she received the One Month Notice on August 12, 2022. Accordingly, I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

Section 47(4) of the Act provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the Act confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, September 30, 2022.

After receiving the One Month Notice on August 12, 2022, the Tenant had until August 22, 2022 to make an application for dispute resolution. The Tenant did not dispute the One Month Notice until September 29, 2022. I find that the Application was made outside of the 10 days permitted under Section 47(4) of the Act.

The Tenant has applied for more time to file his Application. Pursuant to Section 66 of the Act, the director may extend a time limit established by the Act only in exceptional circumstances.

The Tenant testified that she was unable to submit her Application within the 10 days permitted under the Act due to being preoccupied with her daughter's health after the shooting incident on August 6, 2022.

I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenant from making an Application within the time limits set out in Section 47(4) of the Act. The Tenant did not provide any evidence to

demonstrate that they were in the Hospital during the limitation period or why the Tenant waited over a month after the limitation period to submit their Application. For this reason I dismiss the Tenant's Application for more time.

I find the Tenant was out of time to dispute the One Month Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, September 30, 2022. In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice submitted into evidence, I find it complies with section 52 of the *Act*.

I further find that the Landlord has sufficient cause to end the tenancy. This is confirmed by the Tenant's own testimony that at the time that the One Month Notice was served, the Tenant's daughter and their guests were causing issues and Police attendance at the rental unit which escalated to a shooting incident taking place at the rental unit. I grant the Landlord an order of possession, which will be effective at 1:00PM on February 28, 2023 after service on the Tenant. Should the Tenant fail to comply with this Order the Order may be enforced as an Order of the Supreme Court of British Columbia.

Conclusion

The Tenant is conclusively presumed to have accepted the end of her tenancy in relation to the One Month Notice for Cause. The Landlord is granted an order of possession, which will be effective at 1:00PM on February 28, 2023 after service on the Tenant. If the Tenant fails to comply with the order of possession it 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: February 15, 2023

Residential Tenancy Branch