



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 66;
- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Pre-liminary Issue

Should the tenant's request for more time to make an application to cancel the One Month Notice be granted? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on February 5, 2019. The rental unit is in a subsidized housing complex and is operated by a non-profit society.

On February 23, 2023 the landlord served the tenant with a One Month Notice. The One Month Notice served on February 23, 2023 was incorrectly dated for February 25, 2023. In either event, the tenant acknowledged receiving the Notice at the latest on February 25, 2023.

The tenant's application to cancel the One Month Notice was filed on March 17, 2023. The deadline for filing the application as per section 47 of the Act was March 7, 2023.

The tenant's advocate submits as follows on behalf of the tenant:

- The Residential Tenancy Branch provides a service to the public and as such as per the Human Rights Code it has a duty to accommodate people with disabilities.
- The tenant phoned the legal advocate clinic after receiving the One Month Notice.
- Due to the advocates unavailability, her first meeting with the tenant was not until March 10, 2023 at which time a retainer was paid and they went through the tenant's bank records.
- Due to her disability, the tenant requires accommodation in the form of another person to understand, plan, and complete tasks necessary to file.
- Help is particularly required to obtain bank records for the purposes of obtaining an application fee waiver.
- A letter was submitted from the tenant's doctor stating the tenant has a history of anxiety and chronic pain for which she takes medication on a as needed basis.
- The tenant first contacted the advocate clinic on March 1, 2023.
- Ten days past the filing deadline is reasonable in the circumstances.

Regarding the timeliness of the tenant's application, the landlord submits that they have over 350 units and house many tenants with disabilities. As a non-profit they provide various support services to tenants. The landlord submits that at no time did the tenant approach any of the landlord's support services to help her with the matter.

Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances.

Residential Tenancy Policy Guideline, "36. *Extending a Time Period*" provides the following guidance:

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 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.

In this case, the tenant’s advocate stated they were not arguing exceptional circumstances but rather there was a duty to accommodate the tenant’s disability as per the Human Rights Code. The tenant’s advocate provided no precedence for this argument. Regardless, I do not accept the argument that the tenant’s disability prevented the tenant from meeting the 10 Day time limit for filing such an application. There was no documentary evidence provided as to when the tenant first contacted the advocate for assistance or any documented evidence regarding the advocates unavailability to assist the tenant in filing on time. The advocate argued that the tenant particularly required assistance with obtaining records for the purposes of obtaining a fee waiver; however, an application can be started without such documents. Notes on file show that the tenant’s application was not started until four days after the 10 Day time limit had already lapsed. There is no evidence on file to demonstrate that the tenant made a bona fide attempt to file on time or took reasonable steps to comply with the time limit.

Further, I note that the tenant has also submitted multiple support letters from various other persons as character references. It is unclear why the tenant could not have had any of these persons assist her with getting an application started, while she waited for the availability of her advocate.

Accordingly, the tenant’s request to extend a time limit to file this application is dismissed.

Pursuant to section 47(4) of the *Act*, the tenant may make a dispute application within ten days of receiving the One Month Notice. As the tenant received the One Month Notice on February 25, 2023, the tenant’s application should have been filed on or before March 7, 2023. The tenant’s application was not filed until March 17, 2023. In accordance with section 47(5) of the *Act*, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the One Month Notice, March 31, 2023.

The tenant’s application to cancel the One Month Notice is dismissed. I find that the One Month Notice complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

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As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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: May 26, 2023

Residential Tenancy Branch