



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

The Tenant seeks an order pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”) cancelling a One-Month Notice to End Tenancy (the “One-Month Notice”).

J.G. appeared as the Tenant. The Tenant was joined by his advocate, S.M., and his support worker, G.B.-K.. C.L. appeared as the Landlord and was joined by his property manager, K.C..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Preliminary Issue – Service of the Application and Adjournment Request

The Tenant advises that he personally delivered his application to the Landlord’s property manager sometime around January 14, 2023. The property manager acknowledged receipt of the materials from the Tenant.

I am told by the Landlord and the property manager that the materials received included an envelope addressed to the Landlord and a Notice of Dispute Resolution outside the envelope. The property manager tells me he kept the Notice of Dispute Resolution and delivered the Notice of Dispute Resolution to the Landlord.

The Landlord raised issue with there being a difference in the materials he received and those received by his property manager. Specifically, I am told that the Notice of Dispute Resolution was received by the property manager but the various information

sheets required from the Residential Tenancy Branch were not, instead being received by the Landlord. The Tenant's advocate confirmed the package that was served included all the documents.

Rule 3.1 of the Rules of Procedure sets out that the Notice of Dispute Resolution, respondent instructions, fact sheets from the Residential Tenancy Branch, and evidence submitted with the application are to be served on the respondent within three days of their receipt from the Residential Tenancy Branch. Section 89(1) of the *Act* establishes the methods by which applications are to be served and permits personal service of documents on a landlord's agent.

There is no dispute that the property manager is an agent for the Landlord. Indeed, the One-Month Notice provided to me by the Tenant has the property manager's signature as agent for Landlord. In this instance, the Landlord creates a false dichotomy between service of documents on him and service of documents on his property manager. In other words, when the Tenant handed over the whole package to the agent in mid-January 2023, the Landlord was considered served as per s. 89(1) of the *Act*.

I find that the Notice of Dispute Resolution was served in accordance with s. 89(1) of the *Act*.

The Landlord requested an adjournment to prepare for the hearing due to the perceived issues with service described above. The Tenant's advocate disputed the adjournment arguing the Landlord had more than sufficient time to organize and serve evidence. I agree with the Tenant's advocate. It is no excuse for the Landlord to claim he needs more time to get his ducks in a row. The Notice of Dispute Resolution and the associated documents were served in mid-January. The hearing took place on May 5. Over a period of nearly four months, the Landlord failed to prepare. I declined to grant the adjournment request.

Issues to be Decided

- 1) Is the One-Month Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit in either 2016 or 2017.
- Rent of \$800.00 is due each month.
- A security deposit of \$400.00 and a pet damage deposit of \$400.00 was paid by the Tenant.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one month's notice to the tenant.

The Landlord's agent advises that the One-Month Notice was posted to the Tenant's door on December 27, 2022. The Tenant confirms receiving it on December 27, 2022. I find that the One-Month Notice was served in compliance with s. 88 of the *Act*.

I am provided with a copy of the One-Month Notice by the Tenant. The Landlord raised issue with my accepting this document as it was not served. I reviewed the document I have in my possession with the Landlord and his agent. The Landlord's agent confirmed all the relevant details are the same as the copy before him except for the date beside the signature line. The agent says the copy he has does not list the date it was signed, whereas the copy provided to me by the Tenant shows it was signed on December 27, 2023 (error in the original). I find that little turns on this issue as the relevant details are the same. I accept that these are the same documents and that the copy I have has not been altered by the Tenant.

I have reviewed the One-Month Notice provided to me by the Tenant and find that it complies with s. 52 of the *Act*. It is in the correct form, lists the rental unit address, states the correct effective date, and is signed by the agent. I accept the One-Month Notice in my possession says it was signed on December 27, 2023. However, I find that this was a typographical error that commonly occurs around the new year.

To the extent it is necessary, I amend the One-Month Notice pursuant to s. 68 of the *Act* such that it states December 27, 2022. I find that the Tenant knew or ought to have

known it was signed on December 27, 2022, not December 27, 2023, as he had received it that date. I also find it is reasonable to make the amendment given that it is a minor typographical issue that in no way changes the substance of the why the One-Month Notice was issued.

Section 47(4) of the *Act* provides that if a tenant wishes to file to dispute a notice issued under s. 47 they must do so within 10 days of receiving the notice. Indeed, this requirement is plainly stated at the top of the standard form for one-month notices, which states:

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.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application disputing the One-Month Notice on January 11, 2023. This is the day the application was filed, and the fee waiver submitted. Accordingly, I find that the Tenant failed to file his dispute within 10 days of receiving the One-Month Notice on December 27, 2022.

Given this, I find that the conclusive presumption under s. 47(5) of the *Act* has been triggered such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated by its effective date. Therefore, I dismiss the Tenant's application to cancel the One-Month Notice without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I hereby grant the Landlord an order of possession.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

I accept that this has been a longer-term tenancy and was given no indication that the Tenant has not paid rent for May 2023. As such, I grant the order of possession effective at **1:00 PM on May 31, 2023**.

Conclusion

I dismiss the Tenant's application cancelling the One-Month Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on May 31, 2023**.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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 11, 2023

Residential Tenancy Branch