



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

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

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

The tenant acknowledged service of the landlord’s application for dispute resolution.

Preliminary Issue #1 – Service of Tenant’s application and late filing

The landlord testified that she has not been served with the tenant’s application.

The tenant stated she suffers from a brain injury, and she had assistance filing her application. The tenant was not able to provide any details in regard to how or when her application for dispute resolution was served on the landlord. I note that the tenant's application was also filed well outside the 10-day time limit for such an application under the Act.

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances. Under subsection 66(3), the director has no authority to extend the time limit to make an application to dispute a notice to end a tenancy beyond the effective date of the notice.

The tenant provided no evidence of exceptional circumstances other than to state her brain injury prevented her from doing so. There was no medical evidence submitted in support. In either event, the effective date of the One Month Notice was February 28, 2023. The tenant's late application was not filed until March 1, 2023 which is past the effective date. Accordingly, I would not have any authority to extend the time limit.

Based on the facts that the tenant's application was not served on the landlord and in either event was filed late, the tenant's application is dismissed in its entirety without leave to reapply.

The hearing proceeded with respect to the landlord's application.

Preliminary Issue #2 – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the landlord's application seeking an order of possession based upon a One Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in the landlord's application with leave to reapply as these matters are not directly related. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on February 1, 2021

The landlord testified that on January 5, 2023 she served the tenant with the One Month Notice by posting a copy to the door of the rental premises.

The tenant acknowledged receipt of the One Month Notice on the above date.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice. A notice given under this section must comply with the form and content requirements of section 52 of the Act.

Section 52 of the Act states as follows:

In order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the One Month Notice served by the landlord is in compliance with the form and content requirements of section 52 of the Act. The Notice was signed and dated by the landlord, provided the address of the rental unit, stated the effective date of the Notice, stated the grounds for ending the tenancy and was in the approved form.

Therefore, the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the tenant's security deposit.

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: June 16, 2023

Residential Tenancy Branch