



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 43 HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPC, FFL
Tenant: CNC-MT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application submitted on May 26, 2023 pursuant to the Act is for:

- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55; and
- an authorization to recover the filing fee, under section 72.

The Tenant's application submitted on August 3, 2023 pursuant to the Act is for:

- cancellation of the Notice, pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation tenancy agreement, pursuant to section 67.

The landlord's agents LD (the Landlord), AA and DR and the Tenant's advocate VD (the Advocate) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the notice of hearing and the evidence (the materials).

Based on the testimonies I find that each party was served with the materials in accordance with section 89 of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Notice, the continuation of this tenancy and the extension of the timeline to dispute the Notice are not sufficiently related to the tenant's monetary claim to warrant that they be heard together.

The Tenant's monetary claim is based largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss the Tenant's monetary claim with leave to reapply.

Issues to be Decided

Is the Tenant entitled to more time to dispute the Notice?

Is the Tenant entitled to an order for the cancellation of the Notice? If not, is the Landlord entitled to an order of possession based on the Notice?

Is the Landlord entitled to an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Both parties agreed the ongoing tenancy started on October 1, 2022. Monthly rent is \$635.00, due on the first day of the month. The Landlord collected and holds a security deposit of \$600.00. The tenancy agreement was submitted into evidence.

The Landlord affirmed that she registered mailed the Notice to the Tenant's rental unit on April 19, 2023. The tracking number is recorded on the cover page of this decision.

The information provided by Canada Post and submitted into evidence indicates that Canada Post attempted to deliver the package containing the Notice on April 20, 21, and 26, 2023 and the package was returned to the sender unclaimed on May 9, 2023.

The Advocate stated the Tenant only received the Notice with the materials for the Landlord's application. The advocate believes the Tenant checks her private mailbox regularly. The Advocate testified that the Tenant has been dealing with grief, as her

daughter died in May 2022 and the Tenant has a disability. The Tenant submitted a letter from a social worker dated June 20, 2023:

Grief is a winding journey to navigate, particularly for parents who have lost a child. For many families, the support of a family pet can be a key source of comfort, strength and distraction that is instrumental in their grief process. The emotional support of a pet has the potential to help mitigate some of the risks of complex grief and reduce feelings of overwhelm, stress and isolation.

I would like to advocate for compassionate consideration for [the Tenant] and her family to maintain their residence and their family pets.

The Advocate said the Tenant was at the rental unit in the second half of April 2023, the Tenant continues to struggle because of the death of her daughter in May 2022 and has a brain injury.

I inquired the Advocate about exceptional facts happening with the Tenant in April 2023. The Advocate did not provide testimony about exceptional facts.

The Landlord submitted to Notice into evidence. It is signed and dated April 19, 2023 and the effective date is May 25, 2023. It states the reason to end the tenancy and provides details of the events.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the service and merit of the Notice, if I extend the timeline to dispute it, is on the Landlord, and the onus to prove the reasons for more time to submit the application is on the Tenant.

Based on the Landlord's convincing and uncontested testimony, and the tracking number, I find the Landlord registered mailed the Notice on April 19, 2023 to the rental unit's address in accordance with 88(c) of the Act.

I accept the information provided by Canada Post that there were attempted deliveries of the package containing the Notice on April 21 and 26, 2023 and the Tenant did not claim the package.

Section 90(a) of the Act states that a document mailed is deemed received 5 days after it was mailed.

Policy Guideline 12 states: "Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing."

Based on the Advocate's testimony, I find there is no reason to reject the deeming provisions. It is the Tenant's obligation to check her mailbox.

Thus, I deem the Tenant received the Notice on April 24, 2023.

Section 66 of the Act states: "The director may extend a time limit established by this Act only in exceptional circumstances."

Policy Guideline 38 states that an exceptional circumstance implies that: "the reason for failing to do something at the time required is very strong and compelling." Policy Guideline 38 provides examples of what would be exceptional circumstances and what would not be exceptional circumstances:

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time

limit

- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

I find the Advocate's testimony on behalf of the Tenant about exceptional circumstances vague. The Advocate did not provide details about the disability or the extent of the brain injury. Furthermore, the Advocate believes the Tenant checks her mailbox regularly and the Tenant was at the rental unit in the second half of April 2023. The letter dated June 20, 2023 does not indicate the Tenant could not check her mailbox in April 2023.

I am sympathetic to the Tenant's grief regarding the loss of her daughter in May 2022. However, I find the Tenant failed to prove, on a balance of probabilities, that she had extenuating circumstances to not check her mailbox or to apply late, as the death of the Tenant's daughter was in May 2022 and the Notice was served in April 2023.

Section 66(3) of the Act states: "The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice."

In the event the Tenant had a reason to apply for dispute resolution late, considering the effective date of the Notice is May 25, 2023 and the Tenant only submitted her application to dispute the Notice on August 3, per section 66(3), I would not be able to extend the time limit for the Tenant's application.

Considering all of the above, I dismiss the Tenant's application for more time.

Section 47(4) of the Act states the Tenant must dispute a one month notice to end tenancy for cause within 10 days.

Section 47(4) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental unit, as I deemed the Tenant received the Notice on April 24, 2023 and the Tenant disputed the Notice on August 3.

I find the Notice is in accordance with section 52 of the Act, as it is dated and signed by the Landlord, contains the address of the rental unit, the effective date, the grounds for ending the tenancy and it is in the approved form.

As the Tenant is occupying the rental unit and the effective date of the Notice is May 25, 2023, I find the Landlord is entitled to an order of possession, pursuant to section 55(2)(b) of the Act.

Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession if it is unreasonable to vacate the property in a short period of time.

Considering that the Tenant has been occupying the rental unit since October 2022, I find it reasonable to extend the effective date of the order of possession to thirty calendar days after service on the Tenant and not before October 31, 2023.

I warn the Tenant that she may be liable for any costs the Landlord incurs to enforce the order of possession and must pay rent until the day she moves out.

As the Landlord was successful, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for the Landlord's application.

Conclusion

I dismiss the Tenant's application without leave to reapply.

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the Landlord effective thirty calendar days after service of this order on the Tenant and not before October 31, 2023. The Landlord should serve this order as soon as possible. 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.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: September 26, 2023

Residential Tenancy Branch