



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for repeated late payment of rent under sections 47 and 55 of the Act

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for repeated late payment of rent and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant N.G.E. attended the hearing for the Tenant.
Representative N.S. attended the hearing for the Tenant.

Landlord G.R.B. attended the hearing for the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice

Background and Evidence

On August 23, 2023 the Landlord sent the Tenant, via Registered Mail, a One Month Notice to End Tenancy for Cause, citing repeated late payments.

The Landlord provided a Canada Post Registered Mail confirmation of delivery which states that the Notice was delivered on August 25, 2023 at 1:45pm.

The Tenant claims to have received the Notice on September 15, 2023 in her mailbox.

The Tenant submits that with previous Notices served the Landlord had used alternative methods of service and had notified the Tenant of them. In this case the Notice was served via Registered Mail. The Tenant submits that the Registered Mail was left in her mailbox and that she does not regularly check her mail.

On September 25, 2023, the Tenant applied to dispute the One Month Notice.

Analysis

Section 47(4) and section 47(5) of the Act state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I find that the One Month Notice was served to the Tenant on August 25, 2023, as per the Canada Post Registered Mail delivery confirmation. As such, the Tenant had until September 4, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Section 66 of the Act states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. According to Policy Guideline #36 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 very 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.

I find that the tenant has not proved, on a balance of probabilities, that her failure to apply to dispute the One Month Notice within the 10 days was due to an exceptional circumstance. The Landlord fulfilled the statutory requirements of service and there is no requirement to notify the Tenant via other means. Failing to monitor your mailbox does not count as exceptional circumstance. I therefore decline to extend the time limit to dispute the One Month Notice.

The Tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on September 4, 2023. Pursuant to section 55(2) of the Act, the Landlord is entitled to an Order of Possession. Orders of Possession are usually effective two days after service. The Landlord testified that they would be willing

to allow the tenant to stay until January 31, 2024. I find that an effective date of January 31, 2024 to be reasonable in the circumstances.

The Landlord will be given an Order of Possession effective at 1:00p.m. on January 31, 2024 which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2024, the Landlord may enforce this order in the Supreme Court of British Columbia.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective at 1:00 p.m. on January 31, 2024, which should be served on the tenant. Should the tenant fail to comply with this Order, the 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: January 09, 2024

Residential Tenancy Branch