Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910135430: CNC-MT
File #910137900: OPC-DR, FFL

Introduction

The Tenant seeks an order under ss. 47 and 66 of the *Residential Tenancy Act* (the "*Act*") for more time to cancel a One-Month Notice to End Tenancy for Cause signed on October 16, 2023 (the "One Month Notice").

The Landlord files its own application under the *Act* seeking the following relief:

- an order of possession pursuant to s. 55 after issuing the One Month Notice; and
- return of the filing fee pursuant to s. 72.

The Landlord's application was filed as a direct request but was scheduled for a participatory hearing in light of the Tenant's application.

D.J. attended as the Tenant. G.L. and T.E. attended as the Landlord's agents.

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.

Service of the Application and Evidence

The Tenant advised that she served her application and evidence on the Landlord. The Landlord's agents deny receipt of the Tenant's application materials, though clarified that they did, in fact, receive the application by way of email but objected to service via email. In either case, the Landlord's agents indicate that they were prepared to proceed on the Tenant's application in any event.

I find that the Landlord's objection to service of the application via email is one of form over substance. The Tenant's application, and the Landlord's, are essentially mirror copies to each other. I have little doubt that the Landlord was aware of the Tenant's application given the Landlord's matter was scheduled for a participatory hearing. Indeed, upon clarification, the Landlord's agents say they received the email containing the Tenant's application. To the extent necessary, I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant's application.

I am told by the Tenant that she also served a written letter summarizing her response. No letter has been provided to the Residential Tenancy Branch and the Landlord's agent deny receipt of the same. To be clear, the Tenant has an obligation under Rule 3.15 and 3.16 of the Rules of Procedure to ensure any documents she wishes to rely upon are provided to the Residential Tenancy Branch before the hearing. That was not done here. I did not permit her to provide the document after the hearing because they were merely submissions, which the Tenant was at liberty to present orally at the hearing. Further, I have no confirmation that these were served and have not been provided proof by the Tenant that it was served.

Looking next to the Landlord's application and evidence, the Tenant acknowledges receipt of both without objection on the method or timing of service by the Landlord. Accepting this, I find under s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord's application materials.

Issues to be Decided

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

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.

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

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by giving at least one month's notice to the tenant. Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the respondent landlord.

Service and Form and Content of the One Month Notice

The Landlord's agents advise that the One Month Notice was served on the Tenant via registered mail sent on October 21, 2023. I am further advised by the agents that tracking information on the package shows it was retrieved on October 27, 2023. The Tenant acknowledges receipt of the One Month Notice on October 27, 2023.

I find that the One Month Notice was served in accordance with s. 88 of the *Act*. I further find that, as acknowledged by the parties, the Tenant received the One Month Notice on October 27, 2023.

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 her application on November 21, 2023. Accordingly, I find that the Tenant did not file her application within the 10-day time limit imposed by s. 47(4) of the *Act*.

As per s. 47(3) of the *Act*, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the One Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Tenant's Request for Additional Time to Dispute the One Month Notice

Under to s. 66 of the *Act*, the director may extend a time limit established under the *Act* but only under exceptional circumstances. The makes a request for a time extension in her application.

Policy Guideline #36 provides the following guidance concerning what are considered “exceptional circumstances”:

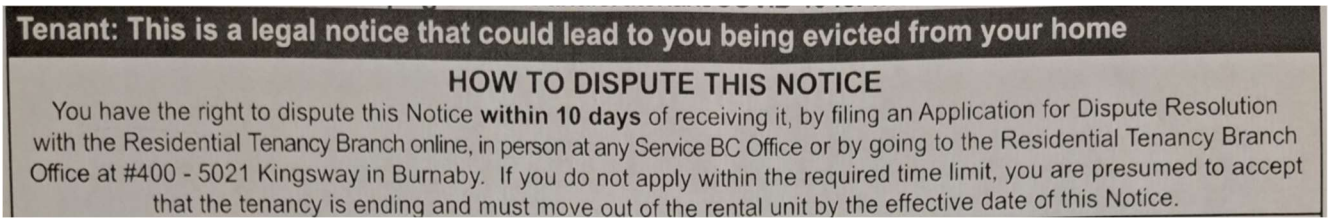
> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, 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.
>
> 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

The Tenant says that she has PTSD and has a hard time dealing with stressful situations. She says that her nerves prevented her from filing on time. I note that I have been provided no documentary evidence from a physician or otherwise to support the Tenant's position on her request for a time extension.

The Landlord's agent G.L. advises that he was contacted by an advocate for the Tenant on November 16, 2023 and that he asked for signed authorization from the advocate so that he could deal with them directly. The agent says he received no such authorization and otherwise never heard from the agent again.

Even if I were to accept Tenant's mental health is such that she cannot follow deadlines, I have been provided little to no information or context on the events that took place after she received the One Month Notice on October 27, 2023.

To emphasize the importance of the deadline, the top of the standard form for the notice to end tenancy prepared by the Residential Tenancy Branch includes the following warning:



Tenant: This is a legal notice that could lead to you being evicted from your home

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.

The Tenant ought to have been alive to the issue and the deadline, which correspondingly imposes an obligation to act in timely manner. Perhaps the Tenant needed assistance to file her application. However, I have no information on the steps she took, when she took them, or otherwise, to inform why she was unable to do it within the timeframe set and expected of her under the *Act*.

I find that the Tenant has failed to prove exceptional circumstances prevented her from filing her application on time. Her claim for a time extension under s. 66 of the *Act* is dismissed without leave to reapply.

Conclusive Presumption and Order of Possession

Under s. 47(5) of the *Act*, a tenant who fails to dispute a notice to end tenancy issued under s. 47 within the 10 days set by s. 47(4) is conclusively presumed to have accepted the notice and must vacate the rental unit by the effective date of the notice. As that is the case here, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy. As such, her claim to cancel the One Month Notice is dismissed 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. Further, a landlord may request an order of possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

As that is the case here, I grant the Landlord an order of possession. Generally, an order of possession is effective 2 days after it is received by a tenant. However, considering the causes for ending the tenancy raised in the notice and the fact that no issue was raised by the Landlord concerning payment of rent, I make the order of possession effective on February 29, 2024.

2) Is the Landlord entitled to its filing fee?

I find that the Landlord was successful on its application and is entitled to its filing fee. Under s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's $100.00 filing fee.

Conclusion

I dismiss the Tenant's request for additional time to dispute the One Month Notice. Accordingly, I dismiss the Tenant's request to cancel the One Month Notice.

I grant the Landlord an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on February 29, 2024**.

I grant the Landlord its filing fee of $100.00, which shall be paid by the Tenant as ordered under s. 72(1) of the *Act*.

It is the Landlord's obligation to serve the order of possession and the monetary order on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court. Should the Tenant fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: February 13, 2024

Residential Tenancy Branch