



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Landlord: OPL
 For the Tenant: CNL-MT, FFT

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 pursuant to the Act is for an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55.

The tenant's application pursuant to the Act is for:

- an extension of the timeline for disputing the Notice, pursuant to section 66;
- cancellation of the Notice, pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord KG (the Landlord), witness HK and tenant MC (the Tenant) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

Service

The parties each confirmed receipt of the notices of application and the evidence (the materials) and that they had enough time to review it.

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

Issues to be Decided

Is the tenant entitled to:

1. An order to grant more time to dispute the Notice?
2. Cancellation of the Notice?
3. An authorization to recover the filing fee?

If the Tenant's application is dismissed, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony 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 tenancy started on December 1, 2017. Monthly rent today is \$1,200.00, due on the first day of the month. The landlord collected and currently holds a security deposit of \$600.00.

The parties also agreed the Landlord attached the Notice to the Tenant's front door and the Tenant found it on January 21, 2024.

The Tenant disputed the Notice on March 26, 2024 and continues to occupy the rental unit.

The parties submitted the Notice into evidence. It is dated January 21, 2024, the effective date is March 31, 2024 and the reason to end the tenancy is that the Landlord's child plans to move to the rental unit.

During the hearing I explained to the parties that, pursuant to Rule of Procedure 6.6, the Tenant has the onus to prove his claim for an extension of the timeline for disputing the

Notice and that if the Tenant is successful in this claim, the Landlord has the onus to prove the reasons for issuing the Notice.

The Tenant affirmed he disputed the Notice on March 26 because he was informed by the Residential Tenancy Branch (RTB) that he could dispute the Notice late.

I asked the Tenant if he had any extenuating circumstances to apply late, such as being in a hospital. The Tenant affirmed that he only talked with the Landlord after the Notice's timeframe to dispute it.

The Tenant affirmed he does not know how long he needs to find a new place to move out if the Notice is confirmed.

Both parties agreed the Tenant did not pay rent in February because of the Notice, and paid rent in full in March, April and May 2024.

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.

I accept the uncontested testimony that the Landlord served the Notice on January 21, 2024 and the Tenant received it on that date.

Section 49(8)(a) of the Act states the tenant may dispute a notice to end tenancy within 15 days of the date the tenant received the notice.

As the Tenant received the Notice on January 21, 2024, the Tenant could have disputed it until February 5, 2024. The Tenant only did so on March 26.

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

Policy Guideline 36 has examples of exceptional circumstances under section 66 of the Act:

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

Based on the Tenant's testimony, I find the Tenant failed to prove that he had exceptional circumstances under section 66 of the Act to dispute the Notice late. An agent from the RTB informing the Tenant that he can dispute a notice to end tenancy late and talking with the Landlord after the legal timeframe of section 49(8)(a) are not extenuating circumstances to dispute the Notice late.

As such, I dismiss the Tenant's claim for an extension of the timeline for disputing the Notice.

Section 49(9) of the Act states that "if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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."

Section 49(9) 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 will end and must move out of the rental unit, as the Tenant disputed the Notice late.

Thus, I dismiss the Tenant's application for cancellation of the Notice.

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, I dismissed the Tenant's application and the effective date of the Notice is March 31, 2024, I find the Landlord is entitled to an order of possession, pursuant to section 55(1) of the Act.

Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession considering the length of the tenancy, the point up to which rent has been paid and the tenant's submissions.

Considering that the Tenant has been occupying the rental unit since 2017, the Tenant's vague submissions about how long he needs to find a new rental unit, the Tenant has not paid February 2024 rent due to the Notice and the effective date of the Notice was March 31, 2024, I find it reasonable to extend the effective date of the order of possession to 10 calendar days after service on the Tenant.

I warn the Tenant that he may be liable for any costs the Landlord incurs to enforce the order of possession and must pay rent until the day he moves out, as the Tenant has not paid February 2024 rent due to the Notice.

The Tenant must bear the cost of the filing fee, as the Tenant was not successful.

Conclusion

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

Pursuant to section 55 of the Act, I grant an order of possession to the Landlord effective 10 calendar days after service. The Landlord must serve this order as soon as possible in accordance with section 88 of the Act and observe the deeming provisions of section 90. 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 Act.

Dated: May 30, 2024

Residential Tenancy Branch