



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Tenant: CNC-MT, LAT, FFT
For the Landlord: OPC, FFL

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 tenant's application pursuant to the Act is for:

- cancellation of a One Month Notice to end tenancy (the Notice), pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order of authorization to change the lock, pursuant to sections 31 and 70; and
- an authorization to recover the filing fee, under section 72.

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

- order of possession under the Notice; and
- an authorization to recover the filing fee, under section 72.

Section 55(1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Tenant LP (the Tenant), advocate CS and landlord MP (the Landlord) attended the hearing. All parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties each confirmed receipt of the Proceeding Packages and that they had enough time to review them.

Based on the testimonies I find the parties served the Proceeding Packages in accordance with section 89(1) of the Act.

Preliminary Issue - Unrelated Claim

Residential Tenancy Branch Rules of Procedure 2.3 and 6.2 state 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 claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests 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 all of the tenant's claims with leave to reapply except the cancellation of the Notice which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. 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 March 1, 2024. Monthly rent today is \$1,700.00, due on the first day of the month. The Landlord collected and holds the \$850.00 security deposit and \$200.00 pet deposit.

The Landlord registered mailed the Notice to the rental unit's address on July 15, 2024 and provided a tracking number. The Tenant confirmed receipt of the Notice on July 16.

The Tenant disputed the Notice on August 14, 2024 and continues to occupy the unit.

The Tenant affirmed that after she received the Notice she sent it to her trustee, a Doctor who has a power of attorney to represent her. The Tenant affirmed the Landlord was aware that she had a trustee with a power of attorney to represent her, but there was no agreement for the Landlord to serve documents directly to her trustee. The Tenant signed the tenancy agreement in February 2024 and paid rent by cheques signed by her until August 2024.

The Tenant affirmed that her trustee did not understand the legal timeframe to dispute the Notice and that the alleged reasons to end the tenancy were ridiculous.

The Tenant was not sick on the days after she received the Notice.

The parties submitted the Notice into evidence. It is dated July 15, 2024, the effective date is August 31, 2024, and it lists the reasons to end the tenancy. It states: "HOW TO DISPUTE THIS NOTICE. You have the right to dispute this Notice **within 10 days** of receiving it" [emphasis and bold letters in the original].

The Landlord confirmed receipt of rent in full for October 2024.

The Tenant affirmed that it is hard to move out because of her advanced age.

Analysis

Based on the undisputed testimony, I find the Landlord served the Notice on July 15, 2024 via registered mail and the Tenant received it on July 16, in accordance with section 88(c) of the Act.

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

Section 47(4) of the Act is mandatory, and I do not have discretion as to its application.

The Tenant only disputed the Notice on August 14, 2024 and the deadline imposed by section 47(4) of the Act was July 26. Thus, the Tenant disputed the Notice late.

Pursuant to Rule of Procedure 6.6, 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 Tenant has the onus of proof for an extension of the time limit to dispute the Notice.

Section 66 of the Act states that arbitrators “may extend a time limit established by this Act only in exceptional circumstances”.

Policy Guideline 36 provides guidance about the exceptional circumstances for more time to dispute notices to end tenancy:

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

Based on the Tenant's testimony, I find the Tenant failed to prove that she had exceptional circumstances to dispute the Notice late. The parties do not have an agreement for service of documents to the Tenant's trustee, the Tenant signed the tenancy agreement in February 2024 and paid rent by cheques signed by the Tenant until August 2024, and the Tenant admits that her trustee, a Doctor, did not understand the timeframe to dispute the Notice.

The Notice contains clear information that it must be disputed in 10 days.

The lack of knowledge from the Tenant or her trustee of the legal timeframe is not an exceptional circumstance. I highlight that this information is clearly noted in the Notice.

Thus, I dismiss the Tenant's application for more time to dispute the Notice.

Therefore, the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must move out of the rental unit, as the Tenant received the Notice on July 16, 2024, disputed it on August 14, had to dispute it by July 26 and did not have exceptional circumstances to dispute it late.

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 August 31, 2024, I order the tenancy ends on the date of this decision, per section 44(1)(f) of the Act and I award the Landlord an order of possession, per to section 55(1) 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 March 2024, the Landlord received rent in full for October and the Tenant's submissions, I find it reasonable to extend the effective date of the order of possession to 30 calendar days after service on the Tenant.

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.

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

I authorize the Landlord to recover the filing fee of her application, as the Landlord was successful in her claim for an order of possession.

Conclusion

I dismiss the Tenant's application to cancel the Notice without leave to reapply and for an authorization to change the lock with leave to reapply.

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective 30 calendar days after service. The Landlord must serve this order as soon as possible in accordance with the Act. 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), I authorize the Landlord 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 Act.

Dated: October 07, 2024

Residential Tenancy Branch