# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACONA INVESTMENTS LTD.,
PROTECTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlords were represented by their agent.

The landlord acknowledged service of the tenant's dispute resolution package. The agent testified that he served the tenant with the landlord's evidence by posting the package to the tenant's door. I was provided with a photograph of the evidence posted to the door. The landlord's written statement indicates that the tenant opened the door and saw the package when the agent was posting it. The evidence was provided to the Residential Tenancy Branch on 10 November 2015. On the basis of this evidence, I find that the tenant was served with the evidence in accordance with section 88 of the Act.

At the hearing the landlord made an oral request for an order of possession.

Prior Decisions

This tenancy was the subject of an earlier application for dispute resolution by the tenant and a cross application by the landlord. Those applications were heard over two hearing dates. I was the arbitrator on both dates.

In that application, the tenant applied to cancel a 10 Day Notice and the landlord sought enforcement of that notice.

In an interim decision dated 6 July 2015 I wrote:

> Given the complexities of the case, it is important that the parties consider whether it is in their interest to retain the assistance of an advocate.

In a decision dated 10 September 2015 I wrote:

> It was clear from the evidence submitted by the tenant that a second notice to end tenancy was issued by the landlord in the period intervening the first and second hearing dates. I asked the tenant at the second hearing date if she wished to amend her application to include an application to cancel the 1 Month Notice.
>
> The tenant, at first, indicated she wished to amend this application to include cancellation of the 1 Month Notice. The agent consented. The tenant later indicated that she wished to withdraw this amendment as she wished to provide more evidence.
>
> Explained the tenant that her choice was to either proceed today on the issue of the 1 Month Notice on the available evidence or to apply at a later date to cancel the 1 Month Notice in a separate application. I informed the tenant that she would require more time to make that application and that she risked exposure to the deeming provision in subsection 47(5) of the Act.
>
> The tenant stated that she understood the risk of withdrawing her application to cancel the 1 Month Notice and stated that she wished to withdraw that portion of her application. I allowed the tenant to withdraw this portion of her application as there is no undue prejudice to the landlord in doing so.
>
> [emphasis added]

Issue(s) to be Decided

Is the tenant entitled to more time to apply to cancel the 1 Month Notice? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began approximately thirteen years ago. Monthly rent of $640.00 is due on the first. The tenant occupies the rental unit with another occupant, NG.

On 18 August 2015 the landlord issued the 1 Month Notice to the tenant. The agent testified that the landlord served the 1 Month Notice by posting that notice to the tenant's door. The 1 Month Notice was dated 18 August 2015 and set out an effective date of 30 September 2015. The 1 Month Notice set out that it was given as:

- the tenant or person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
    - put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has, or is likely to:
    - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord; and
    - jeopardized a lawful right or interest of another occupant or the landlord;
- the tenant has caused extraordinary damage to the unit; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time.

The agent testified that the tenant or her roommate will prop open the fire exit doors to the building. These doors are intended to be locked to control unauthorized access to the residential property. The agent testified that the security of the building is seriously compromised by these actions. The agent testified that someone claiming to be the brother of one of the occupants of the rental unit insisted that he was entitled to prop the doors open in order to allow access to the building as there was no intercom system for

the building. The agent testified that he, the owner of the building, and another employee have viewed the occupants of the rental unit propping open the door. The agent testified that the door will be held open with a cinder block and string from the door knob to the radiator.

The tenant denied that she leaves the door open.

The tenant filed her application on 15 September 2015. NG is not a party to that application.

The tenant submits that she should be permitted to have more time to file her application to cancel the 1 Month Notice because she did not understand the time limit issue and she did not think to ask for help. The landlord does not consent to the tenant's request for more time.

Analysis

Subject to the presumption in subsection 47(5) of the Act, in an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in their 1 Month Notice, among other reasons, that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenant was deemed to have received the 1 Month Notice on 21 August 2015. This means that the tenant had until 31 August 2015 to apply to this Branch to cancel the 1 Month Notice. The tenant did not apply to cancel the 1 Month Notice until 15 September 2015.

The tenant has the onus of showing that she is entitled to an extension of time pursuant to section 66 of the Act.

The tenant was cautioned on 6 July 2015 that the issues were complex and that she may wish to consider seeking an advocate. The tenant did not bring an advocate to the hearing. The tenant was given the option of amending her application heard on 10 September 2015. At that hearing, the legal implications of failing to amend were explained to the tenant. The tenant elected not to amend her application. The tenant now says that she did not understand and did not seek help.

Subsection 66(1) of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

> The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Residential Tenancy Policy Guideline, "*36. Extending a Time Period*" provides me with guidance as to the interpretation of section 66:

> 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 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.

The tenant was explicitly warned about the time limit in section 47 and had the opportunity to comply with that deadline in her earlier application. It is insufficient at this point to say that she did not understand and did not seek help. I confirmed with the tenant that she understood at the last hearing. It was the tenant's responsibility to say something if she did not understand. Further, the tenant was encouraged to seek an advocate and elected not to do so. She cannot now rely on lack of advice as a reason that constitutes exceptional circumstances.

I find that the tenant is not entitled to an extension of time pursuant to subsection 66(1) of the Act. On this basis, the conclusive presumption in subsection 47(5) of the Act applies.

There is no evidence before me that indicates the landlords have waived enforcement of the 1 Month Notice. The landlord has provided arguable evidence to show that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. As the 1 Month Notice is not a nullity, I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenant is

presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 30 September 2015.

As the landlords are entitled to an order of possession on the basis of subsection 47(5) of the Act, I need not consider the 10 Day Notice or the other reasons set out in the 1 Month Notice.

The tenant's application is dismissed.

Pursuant to section 55 of the Act, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenant's application is dismissed and the landlords have made an oral request for an order of possession, I am obligated by the Act to grant the landlords an order of possession. This order of possession is effective one o'clock in the afternoon on 30 November 2015.

Conclusion

At the hearing, the landlord requested an order of possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

I grant an order of possession to the landlord effective at one o'clock in the afternoon on 30 November 2015. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: November 19, 2015

Residential Tenancy Branch