



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT

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 landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 66; and
- cancellation of the landlord's One Month Notice pursuant to section 47.

The landlord R.C. (the landlord), the tenant, the tenant's social worker and the tenant's representative 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.

While I have turned my mind to all the documentary evidence, including witness letters and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) which was personally served to them on September 21, 2017. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The landlord testified that they sent the tenant all their documentary evidence on October 19, 2017 by way of registered mail. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The landlord testified that the One Month Notice was posted to the door of the rental unit on August 14, 2017. The tenant confirmed that they received the One Month Notice on August 16, 2017, upon being discharged from the hospital. In accordance with

section 88 of the *Act*, I find the tenant was duly served with the One Month Notice on August 16, 2017. The One Month Notice indicated the tenant had 10 days to file an Application for Dispute Resolution seeking to cancel the Notice.

The tenant's representative stated that they served their evidence to the landlord and to the Residential Tenancy Branch (RTB) on November 08, 2017. The tenant's representative stated that they were not aware of the rules regarding the service of evidence.

RTB Rules of Procedure Rule 3.14 states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing. I find that the tenant did not serve the landlords with their evidence in accordance with Rule 3.14 and that the landlords may be prejudiced by this late service as they did not have a chance to respond to the tenant's evidence. I further find that the tenant's representative did not give a sufficient reason why this evidence was not available prior to the time that it was served. For these reasons, the tenant's evidence is not accepted for consideration.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the One Month Notice?

Should the landlords' One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

A copy of the landlords' August 14, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by September 30, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a 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;*
- *put the landlord's property at significant risk.*

The tenant's representative stated that the tenant was in the hospital at the time that the One Month Notice was posted to the door of the rental unit. The tenant testified that she is currently in a treatment centre and will be there for the next few months. The tenant's representative testified that she made the Application on behalf of the tenant on September 21, 2017, as soon as she was made aware that this was required.

Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so.

Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, 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 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the required time is very strong and compelling.

I find that the tenant has failed to provide sufficient evidence to establish that there were exceptional circumstances which prevented her from making an application to dispute the One Month Notice within the 10 days allowed by section 47(4) of the *Act*. I find that the tenant was discharged from the hospital on August 16, 2017, which allowed the tenant until August 26, 2017, to make an application for dispute resolution to dispute the One Month Notice.

I find that the tenant's Application was submitted to the RTB on September 21, 2017, and there is no evidence provided by the tenant that shows exceptional circumstances for why the Application was not submitted until this date.

For this reason the Application to set aside the One Month Notice is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is

dismissed, the Arbitrator must grant the landlord an order of possession. The tenant has testified that the monthly rent has been paid on their behalf for November 2017. The landlord confirmed this to be true.

For this reason, I grant an Order of Possession to the landlords effective on November 30, 2017

Conclusion

I dismiss the tenant's application to cancel the landlords' One Month Notice.

I grant an Order of Possession to the landlords **to take effect by 1:00 p.m. on November 30, 2017, after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 *Residential Tenancy Act*.

Dated: November 16, 2017

Residential Tenancy Branch