



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC MT FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, via teleconference, was held on April 13, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1-Month Notice to End Tenancy (the Notice); and,
- more time to make an application to cancel the Notice.

The Landlord and one of the Tenants, I.N., attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Tenants be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenants have applied for more time to make an application to cancel the Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenant stated that she received the Notice on January 27, 2018. The Tenant also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

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.

Section 47 of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. As the Tenants received the Notice on January 27, 2018, they had until February 6, 2018, to dispute the Notice.

After reviewing the file, I note that the Tenants' application was not made until February 8, 2018. In this case, the Tenants did not apply within the allowable 10 day window, which lapsed on February 6, 2018.

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 time required is **very strong** and **compelling**.

After reviewing the file before me, I note that the Tenant, I.N., stated that she was late applying for this hearing because her children were sick, and were home from school. She stated that she did not have a computer at home and it was difficult to file an application with her kids being at home sick. The Tenant, I.N., stated that her husband, L.N., also stays at the rental unit. Occasionally, I.N.'s husband, L.N., stays with his mother if he has to work late, but he is still around the rental unit often, as he is an integral part of the family.

I acknowledge that one of the Tenants, I.N., had difficulty filing an application in time because she was caring for her sick children. However, I am mindful that there is another Tenant, L.N., who is I.N.'s husband. It is unclear why he would be unable to make an application at any point within the 10 Day time period allowed under the Act. I do not find the Tenants have sufficiently

demonstrated that their circumstances were exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed in its entirety.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on April 30, 2018.

Since the Tenants were not successful with their application, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **April 30, 2018, at 1pm**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that 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: April 16, 2018

Residential Tenancy Branch