



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS SENIOR CITIZEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting an extension of time to apply to dispute a Notice to End Tenancy and for cancellation of a One Month Notice to End Tenancy for Cause.

Two agents of the Landlord, as well as the Tenant and her witness, “JH”, appeared for the scheduled hearing. I find that the notice of hearing documents were properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

I note that Section 55 of the *Residential Tenancy Act (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*.

Issues to be Decided

Is the Tenant entitled to an extension of time to dispute the Notice to End Tenancy dated March 27, 2018, pursuant to section 66 of the *Residential Tenancy Act* (“Act”)?

If so, is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act?

If the Tenant is not successful in her Application, is the Landlord entitled to an Order for Possession pursuant to section 55 of the Act?

Background and Evidence

The tenancy began June 1, 2014 pursuant to a written tenancy agreement, later revised in 2017 for rent of \$775.00 and subsidized down to \$320.00 per month. Subparagraph (d) of the addendum to that agreement states that only one resident is allowed to occupy the rental premises, with a guest up to 14 non-consecutive days in any 12 month period. After that, any guest is considered a “resident” by way of definition in the agreement. The Landlord states that the subsidy is based on only the Tenant’s occupancy in the rental unit.

The Tenant testified that she received the One Month Notice to End Tenancy and that she needed additional time to respond because she was trying to locate an advocate, as she struggles with mental health issues and needed assistance with the process, which is unfamiliar to her. She stated that she contacted at least two advocacy groups, experienced a delay with the first when the appointed advocate was promoted and did not return her calls; the second advocacy group told her that they do not do the type of advocacy required.

The Tenant also states her boyfriend had a stroke and was hospitalized. No documentary evidence was submitted to verify these reasons. The Landlord argues that the advocacy groups mentioned will offer services to help people in the Tenant’s situation; she further argued that despite not having an advocate represent her at the hearing, the Tenant successfully managed to file an application with the Residential Tenancy Branch without any problem on April 30th, although three weeks past the deadline requiring a dispute to be filed.

The Landlord prepared a One Month Notice to End Tenancy after problems arose with the tenancy, including fighting heard between the Tenant and her partner on the premises, mailboxes being broken into and the apparent ongoing presence of the Tenant’s boyfriend at the rental unit. The reason listed on the Notice is that there is an unreasonable number of occupants at the rental unit, this being a primary concern given the subsidy that is covered on the Tenant’s behalf. The Landlord states that the boyfriend has been seen at the residence on a regular basis, that he often answers the

door or is seen in bed when the Landlord has made inspections to address numerous complaints of bedbugs and cockroaches in the building. The Landlord sent a warning letter to the Tenant and also asked the boyfriend for evidence in the form of bills to show that he lived elsewhere, which he declined to provide.

The boyfriend, JH, testified that he used to live within the community of Cloverdale and that he moved out about 8 months ago due to issues with a new landlord that had taken over management. It was admitted that his mail has been redirected to the Tenant's address. He stated that his mother had been recently moved to a home where she receives additional support, but that she bought her own unit in the building and that he is living there with her.

He was unable to provide an explanation as to why he did not provide proof of his current living address into evidence to support the Tenant's argument that he does not live with the Tenant. When questioned by the Landlord, JH admitted that he stays with the Tenant at her place about 2-3 nights a month and that this should be of no concern to the Landlord. He further admitted that he is there every day, but that most days he leaves at the end of the day to return to the home his mother now resides in. He stated that he does not receive a rent allowance through his assistance program, as his mother refused to fill out the form to provide for that. The Tenant stated that she does not receive any rent payment from her boyfriend to cover her rental expenses.

Analysis

Under section 47 of the Act, a landlord may serve a One Month Notice to End Tenancy for Cause:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(c) there are an unreasonable number of occupants in a rental unit;

Based on undisputed testimony of the Landlord, I find that the Tenant was served with the Notice to End Tenancy in person on March 27, 2018 as verified by an independent witness, and I find that the 1 Month Notice does comply with the form and content

provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The Tenant did not file an Application until April 30, 2018, citing her delay in obtaining an advocate to explain to her the process and assist her in filing a claim.

Section 66 permits an extension of the time limitation, which the Tenant now requests:

- 66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59*
(3) [starting proceedings] or 81 (4) [decision on application for review].
(2) *Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:*
(a) *the extension is agreed to by the landlord;*
(b) *the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.*
(3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

I find that the Tenant was capable of filing a dispute application to dispute the claim within the ten-day limitation period. The fact that the Tenant ultimately filed a claim some 34 days after being served is evidence that she was able to manage the process without third party assistance or an advocate. I am not convinced that she required an advocate to assist with that process or that there were “exceptional circumstances” that prevented her from filing the claim within the ten days; furthermore, the Residential Tenancy Branch offers assistance in completing forms and explaining the process free

of charge, without delay. Accordingly, I am not extending the time period within which the Tenant was required to dispute the Notice.

I find that the Tenant has failed to file her application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One Month Notice, April 30, 2018.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 *Residential Tenancy Act*.

Dated: June 7, 2018

Residential Tenancy Branch