



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, MT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Each party confirmed that they had exchanged documentary evidence with each other.

Preliminary Issue

The tenant testified that he did not file an application to dispute the notice within ten days as he was busy with work and was in and out of town travelling. Section 66 of the *Act* addresses the issue before me as follows:

Director's orders: changing time limits

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*].

Based on the tenants testimony, I find that he's explanation for filing well outside the timeline does not fall under exceptional circumstances and an extension is denied.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to more time to file an application, pursuant to section 66 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agreed that this tenancy began on August 1, 2018 and is currently ongoing.

The landlord testified that on September 20, 2018 a One Month Notice with an effective date of October 31, 2018 that was sent by registered mail. The tenant confirmed receipt of the One Month Notice on September 25, 2018. The tenant filed to dispute the One Month Notice on October 14, 2018. The tenant entered the One Month Notice into evidence. The landlord issued the One Month notice on the basis: "*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*". The landlord testified that the tenant signed a tenancy agreement that clearly shows that this is a "No Smoking" building. The landlord testified that the tenant was given three written warnings along with numerous verbal warnings. The landlord testified that she has received complaints from other tenants about the smoking as well. The landlord testified that the tenant refuses to abide by the rules and seeks an order of possession.

The tenant gave the following testimony. The tenant testified that the complaints are unfounded. The tenant submits that there seems to be favouritism in the building and that there seems to be a conspiracy against him. The tenant testified that he feels his privacy has been breached because other tenants are taking pictures of him smoking. The tenant submits that he disputes the landlords' position and advised if given three months to get his affairs in order he will move out.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on September 25, 2018, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(5) state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant 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.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the RTB to dispute the One Month Notice. 10 days from September 25, 2018, when the tenant received the One Month Notice, was October 5, 2018. The tenant filed to dispute the One Month Notice on October 14, 2018.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 31, 2018; as that has not happened; I find that the landlord is entitled to an Order of Possession effective 2 days after being served on the tenant. The landlord will be given a formal Order of Possession which must be served on the tenant. The landlord may enforce this Order in the Supreme Court of British Columbia.

For absolute clarity, I not only find that the tenant did not file to dispute the notice as required within the allotted time, but I also find that the landlord has provided sufficient evidence on the merits of the case to be granted an order of possession. The tenant repeatedly disregarded the written warnings of the landlord and conceded and

acknowledged that this is a non-smoking building. Based on all of the above, I find that the tenancy must end.

The One Month Notice to End Tenancy for Cause dated September 20, 2018 with an effective date of October 31, 2018. The tenancy is terminated.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord, which should be served 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.

The tenants 'application is dismissed in its entirety without leave to reapply.

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 26, 2018

Residential Tenancy Branch