



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNC, LRE, MT, OLC, PSF

Introduction

In this dispute, the tenants sought various relief under sections 47(4), 62, 65(1), 66(1), and 70 of the *Residential Tenancy Act* (the “Act”).

The tenants applied for dispute resolution on May 15, 2019 and on May 29, 2019; their applications were joined, and a dispute resolution hearing was held on June 28, 2019. At the hearing, the tenants, the landlord, and various witnesses (none of whom testified) attended the hearing.

The landlord commented that he was never served with the Notice of Dispute Resolution Proceeding document, and instead received a courtesy email from the Residential Tenancy Branch. The tenant (T.T.) acknowledged that they did not serve the notice as is required, and instead sent a text message to the landlord.

While the tenants did not, I find, serve the Notice of Dispute Resolution Proceeding in compliance with the Act, given that the landlord was present at the hearing, and given the relatively narrow issue to be resolved, I proceeded with the hearing.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the preliminary issues of this application.

I note that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

Preliminary Issue 1: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. The Rule further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether the tenancy will continue. As such, all claims made by the tenants, other than the two issues of an extension of time, and the Notice, are hereby dismissed with leave to reapply.

Preliminary Issue 2: Application by Tenants Requesting More Time to File

In their application for dispute resolution filed May 15, 2019, the tenants requested more time to file an application to dispute a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 66 of the Act.

The tenants testified and confirmed that they were served the Notice (a copy of which was submitted into evidence) on April 23, 2019. The tenant (T.T.) testified that she thought she had fully applied for dispute resolution, but that she experienced internet and Wi-Fi connectivity issues. At some point after she applied, she received an email from the Residential Tenancy Branch advising her that as she had not submitted income verification that the application was being declined. It was not until May 15, 2019 that the tenants again applied to dispute the Notice. A review of the Residential Tenancy Branch case management system indicates that the tenant's first application was abandoned on May 8, 2019.

In their application made May 15, 2019, the tenants stated, for a request for more time:

I did file previously but my phone kept shutting down on me and i thought it was completed but i just got an email saying my application was abandoned due to The Residential Tenancy Branch not receiving payment or proof of income for the fee waiver within three days of submitting your application when I thought that I had submitted photos of proof of our income during the application process last week.

Section 66 of the Act outlines the circumstances under which a time limit may be extended. This section reads, in its entirety, as follows:

(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.

The tenants have not established that there are exceptional circumstances that justify an extension of time. It appears that the tenants did not exercise due diligence in filing for dispute resolution by failing to submit proof of income documentation. Simple failure to follow instructions is not, I find, an exceptional circumstance that may give rise to an extension of time. It is an applicant's responsibility to ensure that they (a) complete an application for dispute resolution within the required time, (b) follow the instructions required to complete such an application, and (c) confirm or verify that the application was, in fact, completed. In summary, the tenants did not take reasonable steps in filing their application.

Given the above, I do not find that there are exceptional circumstances and as such I do not extend the time limit under the Act for disputing the Notice.

Preliminary Issue 3: Conclusive Presumption of the Notice

The tenants testified and acknowledged that they received the Notice on April 23, 2019. They did not file an application for dispute resolution within 10 days after the date the tenants received the notice, as required by section 47(4) of the Act. I have not extended the 10-day time limit for the reasons explained above.

Section 47(5) of the Act states that

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As the tenants are conclusively presumed to have accepted that the tenancy ended on May 31, 2019 (as indicated on the Notice) I find that the Notice is effective, and that the tenancy ended on May 31, 2019.

Finally, section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having upheld the landlord's Notice, I thus grant the landlord an order of possession of the rental unit.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service.

This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

Except as otherwise provided in the Act, this decision and order is final and binding on the parties and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the Act.

Dated: June 28, 2019

Residential Tenancy Branch