



Dispute Resolution Services

Page: 1

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 landlord's One Month Notice to End Tenancy for Cause pursuant to section 66;
- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the tenant's request for more time to make an application to cancel the One Month Notice be granted? Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy for this apartment unit began on January 1, 2012.

The tenant was served with a One Month Notice dated September 19, 2019 in person on September 20, 2019. The tenant acknowledged receiving the Notice on this date. The effective date of the Notice was October 31, 2019. The notice was issued on the grounds that the tenant is significantly interfering with or unreasonably disturbing the landlord or another occupant and put the landlords property at significant risk by repeatedly burning food on the stove causing lots of smoke and fire alarms to go off.

The tenant's application to cancel the One Month Notice was filed on October 31, 2019.

The tenant's representative E.C. is a support worker with the Island Health Authority. E.C. submits the tenant was hospitalized for mental health reasons at the time the notice was served. E.C. submits the tenant initially filed an application on September 23, 2019 but cancelled that application after the landlord advised the tenant she was withdrawing the One Month Notice. E.C. submits that this conversation took place on September 30, 2019 when the tenant returned home from the hospital.

The landlord disputes advising the tenant that she was cancelling the One Month Notice. The landlord submits that rather she was constantly telling the tenant's friends and family that he needed more care and this apartment was not suitable for his needs. The landlord testified that on September 30, 2019, the day the tenant returned home from the hospital, she only had a conversation with him regarding repairing some damage he had caused in the unit. The landlord submits she was never served with the tenant's initial application.

The landlord testified that the tenant's support worker requested an extension to the tenancy end date to which she agreed and sent a mutual agreement to end tenancy with an effective date of November 30, 2019.

E.C. submits that the tenant was not agreeing to end the tenancy but just requesting an extension to the effective date of the One Month Notice. E.C. submits the tenant did not sign the mutual agreement.

Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances. Under subsection 66(3), the director has no authority to extend the time limit to make an application to dispute a notice to end a tenancy beyond the effective date of the notice.

I find the tenant has not demonstrated that extenuating circumstances prevented the tenant from filing the application with the permitted timelines. The tenant has submitted insufficient evidence in support of the argument that the initial application was cancelled as a result of the landlord withdrawing the One Month Notice. The tenant did not even testify in this hearing. I find the landlord's testimony to be truthful and accept that at no time did the landlord advise the tenant that she was cancelling the One Month Notice. This is further supported by the fact that the tenant asked for an extension to the effective date of the Notice and the landlord's subsequent agreement to extend to

November 30, 2019. The tenant had originally filed an application to dispute the Notice within the timelines but cancelled the application at his own risk without obtaining anything in writing from the landlord.

The tenant's request to extend a time limit to file an application is dismissed.

Pursuant to section 47(4) of the *Act*, the tenant may make a dispute application within ten days of receiving the One Month Notice. As the tenant received the One Month Notice on September 20, 2019, the tenant's application should have been filed on or before September 30, 2019. The tenant's application was not filed until October 31, 2019. In accordance with section 47(5) of the *Act*, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the extended effective date of the One Month Notice, November 30, 2019.

The tenant's application to cancel the One Month Notice is dismissed. I find that the One Month Notice complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*. In the hearing, the landlord agreed to further extend the effective date of the One Month Notice to February 29, 2020.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on February 29, 2020**. 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: December 23, 2019

Residential Tenancy Branch