



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEICOR PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC-MT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on November 22, 2022. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a One Month Notice to End Tenancy for Cause dated October 11, 2022 (the One Month Notice) and for an extension of time to dispute it;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulations), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by HT, an agent. Both the Tenant and HT provided affirmed testimony.

The parties agreed at the beginning of the hearing that the documents to be relied upon, including the Notice of Dispute Resolution Proceeding package and the Landlord's documentary evidence were served and received in accordance with the Act. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue – Is the Tenant entitled to an extension of time to dispute the One Month Notice?

Section 47(4) of the Act confirms that a tenant who receives a notice to end tenancy for cause has 10 days to dispute the notice. Section 47(5) of the Act provides that a tenant who fails to dispute a notice to end tenancy for cause within this time limit is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

In this case, the Landlord testified, and I accept, that the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on October 11, 2022. Section 90 of the Act confirms that documents served in this manner are deemed to be received three days later. Although the Tenant's application indicates the Tenant received the One Month Notice on October 24, 2022, I find this document is deemed to have been received by the Tenant on October 14, 2022, three days after it was attached to the Tenant's door.

The Tenant's application was made on November 22, 2022, 39 days after the One Month Notice is deemed to have been received. I find the Tenant did not dispute the One Month Notice on time as provided in section 47(4) of the Act.

However, section 66(1) of the Act permits the director to extend a time limit established by the Act in "exceptional circumstances". Policy Guideline #36 describes exceptional circumstances as follows:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party

- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The Tenant testified that she did dispute the One Month Notice in a previous application but that her financial circumstances prevented her from proceeding. On review of the Dispute Management System, the only other application made by the Tenant was a request for an order that the Landlord comply with the Act, Regulations, and/or the tenancy agreement, made on October 17, 2022. The file number for that application is included above for ease of reference. The Dispute Management Systems confirms receipt of the application and a request for a fee waiver. On October 17, 2022, the Tenant was sent an email containing the following statement:



You must submit proof of income to support your request to waive filing fee within three days of this application being submitted or it will be marked as abandoned and you will have to file a new application again.

As the Tenant did not pay the filing fee or provide proof of income for a fee waiver, the dispute was considered to be abandoned. The Tenant was notified that the previous application was considered to be abandoned in an email dated October 21, 2022:

Your Application for Dispute Resolution has been abandoned. The Residential Tenancy Branch did not receive a payment or proof of income for a fee waiver within three days of submitting the application for File Number 110088795.

If you still require dispute resolution services from us, you will need to file a new application. If you need to file a new application, this does not extend any statutory timelines for making an application.

I find there is insufficient evidence before me to conclude there were exceptional circumstances that prevented the Tenant from applying to dispute the One Month Notice on time. Specifically, I find that the Tenant's testimony suggesting that her financial circumstances prevented her from disputing the One Month Notice on time is not "very strong and compelling." As noted in Policy Guideline #36, not following the correct procedure or changing one's mind about filing an application for dispute resolution are examples of reasons which are not likely to be considered exceptional circumstances. Indeed, as indicated by the Tenant, she did submit an application for dispute resolution requesting a fee waiver on October 17, 2022. The Tenant was advised to provide proof of income in support of the request for a fee waiver but failed to do so. As a result, the application was considered abandoned. Therefore, I decline to grant an order extending the time limit to dispute the One Month Notice.

Considering the above, I find that the Tenant failed to dispute the One Month Notice on time and is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice and must vacate the rental unit. As a result, the Tenant's request to cancel the One Month Notice is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession to the landlord. I have reviewed the One Month Notice and find it is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. I find the One Month Notice complies with section 52 of the Act. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

By operation of section 55(1) of the Act, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in 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: February 24, 2023

Residential Tenancy Branch