



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPC MT CNC FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession and recovery of the filing fee. The tenant applied for an extension of time and for cancellation of the notice to end tenancy.

Issue(s) to be Decided

- Did the tenant make her application within the required time frame?
- If the tenant did not make her application in time, should the tenant be allowed an extension of time?
- If the tenant is allowed an extension of time, should the notice to end tenancy be cancelled?
- If the notice to end tenancy is cancelled, is the landlord entitled to an order of possession?
- Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on May 1, 2007. The landlord's evidence is that on September 26, 2008 the landlord typed up a one month notice to end tenancy for cause and on that morning attempted to personally serve the tenant with the notice. The tenant was not home, so the landlord asked the building manager to serve the notice on the tenant later in the day. At approximately 3:00 pm the building manager, with a witness, personally served the tenant with the notice. The landlord submitted a written statement from the witness to support the landlord's evidence on this point. Approximately half an hour later, the tenant and her son attended at the building manager's office to discuss the

notice. The building manager called the landlord, and the landlord spoke to the tenant over the phone. The landlord indicated in the hearing that although the effective date of the notice to end tenancy is October 31, 2008, the landlord was willing on compassionate grounds to extend the order of possession date to November 30, 2008 at 1:00 pm.

The tenant argued in the hearing that the date she was served with the notice to end tenancy was October 3, 2008, not September 26, 2008. The tenant did not provide any supporting evidence to establish that the date she was served was October 3, 2008. The tenant filed her application to cancel the notice to end tenancy on October 9, 2008. She stated that the reason she did not file her application sooner was because her boss would not give her time off work to make her application.

Analysis

Based on the landlord's evidence, I found that the tenant was served with the notice to end tenancy on September 26, 2008. The tenant was required to file an application for dispute resolution within 10 days of having received the notice, but she did not do so. The tenant did not provide sufficient evidence that exceptional circumstances prevented her from making her application within the required time frame, and I therefore found that the tenant was not entitled to an extension of time to dispute the notice.

As the tenant did not apply within the required timeframe to dispute the notice, the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The landlord is entitled to an order of possession based on the notice.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective November 30, 2008. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is also entitled to recovery of the \$50 filing fee.

Dated: November 4, 2008.