



Dispute Resolution Services

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

DECISION

Dispute Codes: ET & CNR

Introduction:

This hearing dealt with an application by the tenants seeking additional time in which to file an application to dispute a 10 day Notice to End Tenancy due to non-payment of rent. If the request for additional time is granted the tenant's request that the 10 day Notice to End Tenancy be set aside.

Issues to be Determined:

Have the tenants' demonstrated that there were exceptional circumstances which prevented them from filing an application for dispute resolution to dispute the ten day Notice to End Tenancy? If additional time is granted, should the 10 day Notice to End Tenancy be set aside?

Background and Evidence:

This tenancy began effective October 1, 2008 as part of the tenants' employment as resident managers and/or caretakers of the residential building. As part of their reimbursement for their employment the tenants did not have to pay the \$750.00 rent as long as they were employed. The tenants did not pay a security deposit.

The tenants' employment ended effective November 30, 2008 by a letter dated November 11, 2008. The tenants were served with a one month Notice to End Tenancy, due to the end of their employment on November 19, 2008 and were served a 10 day Notice to End Tenancy due to non-payment of rent on December 3, 2008.

The landlord filed an application for dispute resolution requesting an Order of Possession based on the one month Notice to End Tenancy and a decision was made on file #728408 on December 18, 2008. The tenants did not appear for this hearing. It was determined in this decision that the landlord was entitled to an Order of Possession based on the 10 day Notice to End Tenancy pursuant to section 46 of the *Act*.

The tenants argued that they did not receive the 10 day Notice to End Tenancy until December 4, 2008. Pursuant to section 46(4) of the *Act* the tenants had five days to either pay the outstanding rent or to file an application for dispute resolution to dispute the notice. The tenants stated that they were unable to file an application within the timeframe under section 46(4) of the *Act* due to flooding, renovations and inspections

which were occurring at the rental unit. The tenants did not elaborate on how these issues prevented one or the other from filing the application.

The tenants submitted that there was a verbal agreement that they would not have to pay any rent for a probationary period of three months, beginning October 2008, and on this basis the 10 day Notice to End Tenancy due to non-payment of rent is not valid.

Analysis:

Section 46(4) of the *Act* provides a tenant with a specific timeframe in which to respond to a 10 day Notice to End Tenancy due to non-payment of rent. I accept that the tenants were served with a 10 day Notice to End Tenancy due to non-payment of rent on December 3, 2008 when it was posted on the door. I also accept the evidence of the tenants that they received the notice on December 4, 2008.

The tenants had 5 days to either pay the outstanding rent, which would have rendered the notice void, or to file an application to dispute the notice. The tenants did not file an application to dispute the notice until December 12, 2008. Section 46(5) of the *Act* states that if the tenants' fails to exercise either of these rights they are conclusively presumed to have accepted the end of the tenancy.

Section 66 of the *Act* allows me to alter a timeframe established under this *Act* in exceptional circumstances. An exceptional circumstance must be strong and compelling, such as being in the hospital during all material times. Reasons such as not feeling well or not understanding the applicable law or procedure are not considered exceptional circumstances.

I am not satisfied that the tenants met the burden of establishing that there were exceptional circumstances which prevented them from filing an application to dispute the Notice to End Tenancy within the timeframe required under section 46(4) of the *Act*. I deny the tenants' request for additional time to dispute the notice.

As a result, I find that the tenants' failed to exercise their rights under section 46(4) of the *Act* and are conclusively presumed to have accepted the end of the tenancy. On this basis I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenants.

Conclusion:

I deny the tenants' application for additional time to dispute the 10 day Notice to End Tenancy. Further, I find that the notice is valid and I have granted the landlord an Order of Possession. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Dated January 06, 2009.
