



Dispute Resolution Services

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

Decision

Dispute Codes: CNC, MT

Introduction

This matter dealt with an application by the Tenants to extend the time to apply to cancel a Notice to End Tenancy and if successful, to cancel a Notice to End Tenancy for Cause dated November 29, 2008. The hearing commenced as scheduled, however, after 10 minutes, the Tenants had not dialed into the teleconference.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This month to month tenancy started approximately 3 years ago. The Landlord served the Tenants in person on November 29, 2008 with a One Month Notice to End Tenancy for Cause dated November 29, 2008. The Tenants applied to cancel that notice on December 10, 2008.

Analysis

Section 47(4) of the Act states that a Tenant must apply to cancel a Notice to End Tenancy for Cause **within 10 days of receiving** it. If a Tenant fails to apply to cancel the notice within 10 days, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenants would have had to apply to cancel the notice no later than December 9, 2008. However, the Tenants did not apply to set aside the Notice until December 10, 2008. Section 66(1) of the Act says that the director may extend a time limit under the Act but only in *exceptional circumstances*. In the absence of any evidence from the Tenants, their application to set aside the notice is dismissed without leave to reapply.

The Landlord requested and I find he is entitled to an Order of Possession to take effect immediately, or on January 12, 2009.

Conclusion

The Tenants' application is dismissed without leave to apply. An Order of Possession effective January 12, 2009 has been issued to the Landlord and a copy of it must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia.