

Decision

Dispute Codes:

CNC

MT

Introduction

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application to cancel a Notice to End Tenancy for cause, dated November 27, 2008, and for leave for Tenant to be allowed more time to make application to cancel the Notice to End Tenancy.

Preliminary Matters

At the beginning of the hearing, the Tenant agreed to vacate the rental unit by January 31, 2009. The Tenant submitted that she did not receive the Notice to End Tenancy until December 4, 2008, and that therefore it is not valid until January 31, 2009.

The Notice to End Tenancy gives an effective date of December 31, 2008. The Landlord submitted that he served the Tenant by double registered mail. His verbal evidence is that he mailed the Notice to End Tenancy to the Tenant on November 27, 2008. Section 90(a) of the Act deems documents to be served “on the 5th day after it is mailed”. In this particular situation, the documents were deemed to have been served on December 2, 2008.

Section 47(2) of the Act states:

A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Under this tenancy agreement, the rent was payable on the 1st day of each month. Therefore, when sections 90(a) and 47(2) of the Act are applied, the earliest possible effective date to end the tenancy under the Notice is January 31, 2009.

Therefore, under sections 53 (1) and (2) of the Act, the effective date of the notice to End Tenancy is automatically changed to January 31, 2009.

The Tenant has agreed to vacate the rental unit on January 31, 2009, and therefore her application under sections 66(1) and 47(4) of the Act is withdrawn.

The Tenant applied to amend her Application for Dispute Resolution to include a claim for damages. A copy of the Tenant's application to amend the original Application for Dispute Resolution was not served on the Landlord by the Tenant.

The Landlord requested an Order of Possession under Section 55, effective January 31, 2009.

Conclusion

I dismiss the Tenant's application to amend her Application for Dispute Resolution to include a claim for damages. She retains the right to file another Application for Dispute Resolution.

I grant the Landlord's application for an Order of Possession effective January 31, 2009. The order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

January 2, 2009
