



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPC, CNC, OLC, & FF

Introduction

This hearing dealt with cross applications by the parties. The landlord has filed an application seeking an Order of Possession further to having served the tenants with a one month Notice to End Tenancy for cause. The tenants filed an application seeking more time to dispute the one month Notice to End Tenancy for cause and Orders that the landlord complete repairs to the rental unit and comply with the tenancy agreement or *Act*.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Issues

I dealt with two preliminary issues:

1. Service of the One Month Notice to End Tenancy for Cause; and
2. The tenants' request for additional time to file an application to dispute the notice to end tenancy.

The landlord stated that the one month Notice to End Tenancy was served upon the tenants by registered mail on April 22, 2009. The tenants made the initial statement that they accepted service of the notice on the deeming date, or on the fifth day pursuant to section 90(a) of the *Act*. However, on further discovery the one tenant stated that he was never served with a copy of the one month Notice to End Tenancy until May 29, 2009. This was the date that the landlord served the tenants with notice of their application and this hearing. The tenant also insinuated that if the service of the one month Notice to End Tenancy had been completed by the other tenant, his mother, she would not understand its significance. I questioned the tenant as to whether there is any medical reason why his mother would lack capacity which would support the conclusion that service was not effective. The tenant denied that his mother lacked capacity. The tenant presented no evidence to support the conclusion that the notice was not received on April 27, 2009 by registered mail.

I am satisfied, based on the evidence before me, that the tenants were served with the one month Notice to End Tenancy by registered mail on April 22, 2009 in accordance to section 89 of the *Act*.

Having made this determination I next turn my mind to the tenants' request for additional time to dispute the one month Notice to End Tenancy. Section 66 of the *Act* provides that in exceptional circumstances a time line established under the *Act* may be extended. However, section 66(3) of the *Act* states:

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I interpret this to mean that additional time to dispute a notice must not be provided if the request is received after the effective date of the notice in question.

I have determined that the tenants were served with a one month Notice to End Tenancy for cause on April 27, 2009 and I find that the effective date of that notice was May 31, 2009.

The tenants filed their application to dispute the notice on June 3, 2009. This is after the effective date of the one month Notice to End Tenancy. As a result I deny the tenants' application seeking additional time to dispute the notice.

Analysis and Findings

I have accepted that the tenants failed to dispute a one month Notice to End Tenancy for cause pursuant to section 47 of the *Act* and I have denied the tenants' request to for additional time to dispute that notice pursuant to section 66(3) of the *Act*.

Therefore, pursuant to section 47(5) of the *Act*, which states:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.

I find that the landlord is entitled to an Order of Possession effective **June 30, 2009** at **1:00 p.m.** This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenants' application for dispute resolution is dismissed. I have granted the landlord's application and request for an Order of Possession further to a one month Notice to End Tenancy for cause.

I Order that the landlord may recover the \$50.00 filling fee paid for this application from the tenants by retaining that sum from the tenants' security deposit plus interest.

Dated June 10, 2009.

Dispute Resolution Officer