



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 two applications: 1) from the landlord for an order of possession, and recovery of the filing fee for this application; 2) from the tenant for more time to make an application to cancel a notice to end tenancy, and cancellation of the notice itself. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to an order of possession and recovery of the filing fee
- Whether the tenant is entitled to more time to make an application to cancel a notice to end tenancy, and cancellation of the notice itself

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on November 1, 2008. Rent in the amount of \$485.00 is payable in advance on the first day of each month, and a security deposit of \$242.00 was collected on November 6, 2008.

As a result mainly of complaints to the landlord about a range of repeated disturbances from the tenant and / or persons attending her unit, the landlord issued a one month notice to end tenancy for cause dated April 15, 2009. The parties agree that the notice was served personally on the tenant on that same date. The tenant made application to dispute the notice on May 4, 2009, which is 19 days after being served with the notice. The tenant stated that her application fell outside the 10 day statutory time limit for

disputing the notice as she was under stress, and was also of the understanding that she had 20 days to make application.

During the hearing the parties exchanged views on events giving rise to the dispute and discussed potential dates for ending the tenancy.

Analysis

Section 47 of the Act addresses **Landlord's notice: cause**. In particular, section 47(4) of the Act provides that a tenant may dispute a notice given under this section "by making an application for dispute resolution within 10 days after the date the tenant receives the notice." In the circumstances of this case, the tenant made her application 19 days after receipt of the notice.

Section 66 of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances. Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and states, in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure

- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

After careful consideration of the tenant's testimony, I find her reasons for failing to make a timely application to dispute the one month notice are not "exceptional." In the result, I dismiss the tenant's application for more time to make an application to cancel the notice. The tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which was May 31, 2009. Accordingly, I find that the landlord is entitled to an order of possession. Pursuant to section 63 of the Act, during the hearing the parties agreed that the order of possession will be effective not later than 1:00 p.m., Tuesday, June 30, 2009.

As the landlord has been successful in this application, I find that the landlord is entitled to recovery of the \$50.00 filing fee. The landlord may therefore withhold \$50.00 from the security deposit for this purpose at the end of the tenancy.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Tuesday, June 30, 2009**. This order must be served on the tenant. 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.

DATE: June 10, 2009

Dispute Resolution Officer