

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, OP, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a cross-application by the tenant for an order setting aside a notice to end tenancy. Both parties participated in the conference-call hearing and had opportunity to be heard.

Issue(s) to be Decided

Did exceptional circumstances prevent the tenant from applying to dispute the notice to end tenancy within the required timeframe?

Background and Evidence

The parties agreed that on June 11, 2009, the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The tenant did not apply to dispute the Notice until July 10 and applied for an extension of time to file her dispute. The tenant testified that she delayed disputing the Notice because the landlord's agent had told her that the Notice was being given early, so the tenant thought she could wait until the time the Notice would normally have been served before the time to dispute the Notice would start running. The landlord's agent testified that when she served the tenant with the Notice she told her that she normally would serve the notice at the end of the month but that she was giving it to her early to give the tenant more time to find other accommodation.

The tenant testified that when she received the Notice, she brought it to two other people to read because she did not understand it. The tenant further testified that she started looking for other accommodation, but then decided that she would "fight" the Notice. The tenant argued that she suffers from a disability which prevented her from acting quickly on the notice. The tenant's advocate argued that because a fellow member of the Squamish First Nation who lived in the same complex had passed away,

it had a profound effect on other members of that Nation.

Analysis

In order to be granted more time to dispute the Notice, the tenant must prove that exceptional circumstances prevented her from acting within the statutorily prescribed timeframe pursuant to section 66(1) of the Act. I find that the circumstances described by the tenant do not amount to exceptional circumstances. From the tenant's description of events, it is apparent to me that she intended to comply with the notice, and then had a change of heart. I do not accept that the fact that the landlord gave the Notice to the tenant some 2 ½ weeks prior to the end of the month led her to believe that the timeframe to dispute the Notice was somehow extended. The tenant argued that she did not understand the Notice, but her testimony shows that she was aware that there was a limited time in which to dispute the Notice. Even if the tenant had trouble understanding the Notice, and I am not persuaded that she did, she immediately took the Notice to be read by two other people who could have read the information clearly printed on the Notice advising of the timeline in which the Notice had to be disputed. For these reasons I dismiss the tenant's application for more time to dispute the Notice.

I find that the landlord is entitled to an order of possession. Because the landlord accepted rent for use and occupancy for the month of August, the order will be effective August 31, 2009. The tenant must be served with the order of possession. 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.

The landlord is also entitled to recover the \$50.00 filing fee paid to bring this application. I order that the landlord deduct this sum from the tenant's security deposit.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession effective August 31, 2009.

Dated August 18, 2009.