

## **Decision**

**Dispute Codes:** MT, CNC, FF

### **Introduction**

This hearing dealt with an application from the tenants for more time to make an application to cancel a notice to end tenancy, cancellation of the landlord's one month notice to end tenancy for cause, in addition to recovery of the filing fee. The landlord made a verbal request for an order of possession in the event the tenants' application does not succeed. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to any or all of the above under the Act
- Whether the landlord is entitled to an order of possession

### **Background and Evidence**

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on September 18, 2001. Currently, rent in the amount of \$596.00 is payable in advance on the first day of each month. A security deposit of \$225.00 was collected on September 18, 2001.

The landlord issued a 1 month notice to end tenancy for cause dated September 24, 2009. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

damage the landlord's property *Health & Fire Hazard (Tins & Glass Items)*

Tenant has caused extraordinary damage to the unit / site or property / park  
*Storage Not Allowed in Common Area*

**[italicised emphasis added to notations made manually]**

The tenants filed an application to dispute the notice on October 7, 2009.

During the hearing the tenant was clearly upset about the notice. She spoke with a raised voice, repeatedly interrupted, and was requested a number of times to await her turn to give evidence. In sum, the tenant did not advance a coherent argument in support of the application for more time to apply to dispute the notice. In short, appears as though the tenants paid insufficient attention to the provision set out on the notice in regard to the limited period of time available to dispute the notice.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 1 month notice to end tenancy for cause dated September 24, 2009. On the notice it is stated in part, as follows:

You have the right to dispute this Notice within 10 days after you receive it by filing an application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

Further, section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(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.

As the notice was served on September 24, 2009, the last day (10<sup>th</sup> day) for filing an application to dispute the notice was October 5, 2009. Since the tenants' application was filed on October 8, 2009, their application was filed 3 days late. The tenant's explanation for the late filing appears to be limited to being unfamiliar with the notice and / or not paying sufficiently careful attention to information provided in regard to the time limit for disputing it.

Section 66 of the Act addresses **Director's orders: changing time limits**, and provides in part:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

Further, Residential Tenancy Policy Guideline # 36 speaks to **Extending a Time Period** and provides, in part:

### **Exceptional Circumstances**

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 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

Following is an example of what might be considered “exceptional” circumstances, depending upon the facts presented at the hearing:

- the party was in the hospital at all material times

After consideration of the tenant’s testimony in support of an application for more time to apply, I find that the reasons for the late application are not exceptional. Accordingly, I dismiss the tenants’ application for more time to apply and I find that the landlord is entitled to an order of possession. At the landlord’s request, the *order of possession* is to be effective 1:00 p.m., December 31, 2009.

As the tenants have not succeeded in their application for more time to apply and for cancellation of the notice itself, their application to recover the filing fee is dismissed.

### **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., December 31, 2009**. This order must be served on the tenants. Should the tenants 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: November 23, 2009

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Dispute Resolution Officer