



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, OLC, RPP, LAT, FF

Introduction

This hearing was convened upon the application of the tenant seeking:

1. More time to make this application;
2. To cancel a Notice to End Tenancy given for cause;
3. An Order that the landlord comply with the Act;
4. An Order that the landlord return the tenant's personal property
5. An Order that the tenant be allowed to change the locks to the rental unit; and
6. An Order to recover the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

Issues(s) to be Decided

The first issue to be decided is whether to allow the tenant's application for more time to make this application.

Background and Evidence – Application for More Time

The parties agree that the tenant was served with a Notice to End Tenancy given for Cause. In her Application for Review the tenant acknowledges receiving that Notice on September 24, 2009. The tenant states that due to medical reasons she was unable to file an Application seeking to dispute the Notice until October 20, 2009. In support of

her testimony the tenant files a note from a physician at “The Heights Medical & Laser Centre” dated November 12, 2009 stating:

This patient has debilitating migraines which are exacerbated by stress.

Analysis – Application for More Time

The Residential Tenancy Act provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

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 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

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

FINDINGS

The evidence is that the tenant was served with the 1 Month Notice to End Tenancy for Cause on September 24, 2009. As set out on that Notice the tenant had 10 days to make application to dispute the Notice but she did not dispute the Notice until October 20, 2009. In support of her application she submits a note issued November 12, 2009 from a doctor stating that the tenant suffers debilitating migraines. The doctor's note provided by the tenant is issued well after the relevant time period, it does not specifically address the condition of the tenant at the relevant time period nor does it demonstrate a severity of circumstance, such as hospitalization, that may have prevented the tenant or someone on the tenant's behalf from filing an application for dispute resolution within the required time period. Overall I find that the tenant has provided insufficient evidence that extraordinary circumstances existed such that she

was unable to make an application to dispute the landlord's notice within the required time period and I therefore dismiss the applicant's application to extend the time for filing the Application for Dispute Resolution.

If a tenant who has received a notice under Section 47(1)(h) for failing to comply with a material term of the tenancy does not make an application for dispute resolution within the 10 days as set out in section 47(4) of the Act then the tenant:

47(5)(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

47(5)(b) must vacate the rental unit by that date.

The landlord has requested an Order of Possession, as I have not allowed the tenant's application for more time to make the application to cancel the notice and the effective date on the notice having passed, the landlord is entitled to an Order of Possession. The landlord has stated that she is willing to allow the tenant two weeks to move and the Order of Possession will therefore become effective 1 o'clock in the afternoon on December 17, 2009.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

With respect to the tenant's application for the return of her personal property the evidence of the tenant is that she thought the landlord would tow her vehicle away and this is the reason she made this application. The tenant states that her vehicle has not been towed away and therefore this application is dismissed.

With respect to the balance of the tenant's applications to change the locks and obtain an Order that the landlord comply with the Act, as this tenancy is ending these claims are dismissed.

Finally, as the tenant has been unsuccessful in her applications her application to recover the filing fee is also dismissed.