



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPC, CNC and MT

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession on the basis that the Landlord has cause to end the tenancy.

The Tenants filed an Application for Dispute Resolution in which the Tenants applied to set aside a Notice to End Tenancy for Cause; for more time to file the Application for Dispute Resolution; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented 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 relevant oral evidence, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided are whether this tenancy should end pursuant to section 47 of the *Residential Tenancy Act (Act)*, whether the Tenants should be granted more time to apply to set aside a Notice to End Tenancy that is the subject of this dispute; and whether the Tenants are entitled to recover the cost of filing their Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the current Landlord purchased this rental unit from the former Landlord on November 16, 2009.

The Tenant stated that on October 28, 2009 a real estate agent served him with a One Month Notice to End Tenancy for Cause that declared that the Tenant was required to vacate the rental unit on November 30, 2009. The reason stated for the Notice to End Tenancy was that the Tenant has caused extraordinary damage to the unit/site. The Notice to End Tenancy declared that the Notice to End Tenancy was from his former landlord, although it was signed by a real estate agent that the Tenant believed was acting for the new Landlord. The Notice to End Tenancy clearly informs the Tenants that they must move out of the rental unit on the date set out on page one of the Notice if they do not file an Application for Dispute Resolution within ten days of receiving the Notice to End Tenancy.

The Tenant stated that he believed the real estate agent that served him with the Notice to End Tenancy was an agent for the new Landlord; that he spoke with his former landlord who advised him that he did not have any problems with the Tenant remaining in the rental unit; and that he did not file his Application for Dispute Resolution within ten days of receiving the Notice to End Tenancy because he did not believe that the new Landlord had the authority to serve a Notice to End Tenancy. The Tenants filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy on November 26, 2009.

The male Landlord stated that the real estate agent that served the Notice to End Tenancy was acting on behalf of the former landlord; that the real estate agent represented the former landlord in the real estate transaction; that he is not named on the Notice to End Tenancy; and that he did not serve the Notice to End Tenancy.

Analysis

Section 47(4) of the *Act* stipulates that a tenant may dispute a Notice to End Tenancy that is served pursuant to section 47 of the *Act* by making an application for dispute resolution within ten days after receiving the Notice. In these circumstances the Tenants did not file an Application for Dispute Resolution until November 26, 2009, which is thirty days after they received the Notice to End Tenancy.

Section 66(1) of the *Act* authorizes me to extend the time limit established by section 47(4) of the *Act* only in exceptional circumstances. The word "exceptional" means that an ordinary reason for a party not complying with the time limit is not grounds to extend the time limit. The word "exceptional" implies that the reason for failing to do something within the required time period is very strong and compelling. As a Court has previously 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 being said.

I find that the Tenants explanation for not applying to set aside the Notice to End Tenancy within the legislated time period does not constitute exceptional circumstances and I dismiss their application for more time to make an application for set aside the Notice. In reaching this conclusion I determined that an opinion that the Notice to End Tenancy was not served by the proper party does not constitute exceptional circumstances, particularly when the proper landlord is named on the Notice to End Tenancy. Although this may have been grounds to dispute the Notice to End Tenancy, it certainly was not grounds to simply disregard the Notice and to refuse to vacate the premises.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As the Tenants did not file an application to dispute the Notice to End Tenancy, I find that the Tenants accepted that the tenancy was ending on November 30, 2009, pursuant to section 47(5) of the *Act*. On this basis, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I hereby dismiss the Tenants' application to set aside the Notice to End Tenancy; I dismiss the Tenants' application to recover the cost of filing the Application for Dispute Resolution; and I grant the Landlord an Order of Possession that is effective on January 31, 2009 at 1:00 p.m. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2010.

Dispute Resolution Officer