

Decision

Dispute Codes: MT, CNC

Introduction

This hearing dealt with an application by the tenant for more time to make an application to cancel a notice to end tenancy, and cancellation of a notice to end tenancy for cause. The tenant, with a friend assisting him in translation, participated in the hearing and gave affirmed testimony.

The hearing was originally scheduled to take place by way of conference call at 11:00 a.m. April 6, 2010. However, in response to a request from the applicant, the conference call was changed to a face-to-face hearing and was scheduled to commence at 11:30 a.m. on April 7, 2010.

The tenant testified that he served the “notice of a rescheduled face-to-face dispute resolution hearing” in person to the confidential secretary of the landlord’s board of directors on or about March 24, 2010. Despite this, the landlord was not represented at the face-to-face hearing.

Issues to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

The month-to-month tenancy began on or about May 1, 2008. The tenant’s portion of monthly rent is \$296.00. The tenant is unable to recall whether a security deposit was collected at the outset of tenancy.

Arising from an incident involving attendance to the unit by the fire department on February 11, 2010, the landlord issued a 1 month notice to end tenancy for cause dated February 12, 2010. The notice was served in person on the tenant on that same date.

A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

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

seriously jeopardized the health or safety or lawful right of another
occupant or the landlord

The incident in question involved a call to the fire department when smoke from the tenant's unit entered into the hallways of the building where his unit is located. It is understood that the tenant had previously disabled the smoke alarm in his unit and had neglected to reconnect it. In his written submission the tenant stated in part, as follows:

I can very simply explain what happened that cause the alarm. As you are aware I am on medications and I suffer extreme anxiety and experience pain in my back and leg. On the day that accident happened, I was preparing dinner and after taking several pain killers lay down for a minute while my dinner was simmering on the stove. Unfortunately, I must have dozed off and the burning soup I was cooking triggered the alarm.

As to the other allegations, that I was under the influence of alcohol, I strongly deny. If these are the basis for my evictions, I would like to prove this allegation.

The tenant filed an application to dispute the notice on March 3, 2010. The tenant's application includes an application for more time to make an application to cancel the notice. Reasons cited by the tenant for the late submission of his application include difficulty comprehending the information set out in the notice itself, partly as a function of English being his second language, in addition to the effects of his use of prescribed medications. Evidence submitted by the tenant includes a letter from his physician in which the physician confirms the tenant's use of prescribed medications for a number of conditions.

The tenant denies that he has an alcohol problem or that he frequently consumes alcohol to the point of intoxication.

Analysis

Section 47 of the Act addresses **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.

As the tenant testified that he received the notice in person on February 12, 2010, pursuant to the above legislation, the last day on which he could file an application to dispute the notice was February 22, 2010; his application was filed 9 days after this on March 3, 2010.

Section 66 of the Act speaks to **Director's orders: changing time limits**, and provides in part as follows:

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 addresses "Extending a Time Period," and provides in part as follows:

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.

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

Based on the documentary evidence and undisputed testimony of the tenant, with assistance in translation provided during the hearing by a friend, I find that the tenant has established entitlement to more time to make an application to cancel a notice to end tenancy. I find that reasons which exist in support of this finding include an absence of willful failure on the part of the tenant to comply with the relevant time limit, limited comprehension of written English, use of prescribed medications, and an application which indicates there is merit to the claim.

As for the tenant's application to cancel the landlord's notice, first, I find that the incident giving rise to the landlord's notice appears to be isolated, as opposed to one more incident in a pattern of problematic conduct. Further, the explanation offered by the tenant for its occurrence appears reasonable and points to the accidental nature of the

incident. Finally, the use of medication and possible side effects appear to be supported by a letter written by the tenant's physician.

As to the allegation that the tenant was intoxicated, there are no sworn affidavits in evidence to support this allegation, and neither the landlord nor witnesses for the landlord were present at the hearing to give affirmed oral testimony in this regard.

Section 55 of the Act addresses **Order of possession for the landlord**. In part, this section provides that the landlord can make an oral request for an order of possession at the time scheduled for the hearing, or request an order of possession by making an application for dispute resolution after a notice to end the tenancy has been given. Neither of the two aforementioned options have been exercised by the landlord.

For all of the above reasons, the landlord's notice to end tenancy is hereby cancelled, with the effect that the tenancy continues in full force and effect.

Finally, for the information of the parties, attention is drawn to section 56 of the Act which speaks to **Application for order ending tenancy early**. The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

Pursuant to all of the above, the landlord's notice to end tenancy is hereby cancelled, and the tenancy continues in full force and effect.

DATE: April 8, 2010

Dispute Resolution Officer