



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, OLC

Introduction

This matter dealt with an application by the Tenant for more time to apply to cancel a Notice to End Tenancy and to cancel a One Month Notice to End Tenancy for Cause dated July 29, 2010 as well as for an Order that the Landlords comply with the Act.

Issues(s) to be Decided

1. Are there exceptional circumstances that warrant allowing the Tenant to file her application late?
2. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on May 1, 2010 and expires on April 30, 2011. On July 29, 2010, the Landlords' agent served the Tenant in person with a One Month Notice to End Tenancy for Cause dated July 29, 2010. The Notice alleged that the Tenant (or a person permitted on the rental property by the Tenant) had significantly interfered with or unreasonably disturbed another occupant or the Landlord of the rental property.

The Tenant did not apply for dispute resolution to cancel the One Month Notice until August 10, 2010. The Tenant said she applied late because she did not pay close enough attention to the information contained on the Notice and was entertaining company from out of town at the time. The Tenant also said she was stressed out from receiving the Notice, has asthma and relies on bus service for transportation.

Analysis

Section 47(4) of the Act says that a Tenant who receives a One Month Notice to End Tenancy for Cause must apply for dispute resolution to cancel it within 10 days or else the Tenant is conclusively presumed under s. 47(5) of the Act to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit on that date. I find that the Tenant was served with the One Month Notice to End Tenancy for Cause on July 29, 2010 but did not apply to cancel the Notice within the 10 days granted under s. 47(4) of the Act.



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Section 66(1) of the Act says that “the director may extend a time limit established by the Act (but) only in exceptional circumstances.” RTB Policy Guideline #36 describes some reasons that may or may not be considered exceptional circumstances. In particular, at p. 1, the Guideline says exceptional circumstances **do not** include “not paying attention to the correct procedure” or “not feeling well.” On the other hand, it says that exceptional circumstances could include “a party being in the hospital at *all* material times.”

I find that there is no evidence that the Tenant was prevented due to exceptional circumstances from filing her application to cancel the One Month Notice to End Tenancy for Cause within the 10 days granted under the Act. As a result, the Tenant’s application for more time to apply to cancel the Notice is dismissed without leave to reapply. The Landlord requested and I find that he is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant.

Conclusion

The Tenant’s application is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: September 28, 2010.

Dispute Resolution Officer