

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's application for Dispute Resolution seeking additional time to dispute a one month Notice to End Tenancy for Cause. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the tenant demonstrated exceptional circumstances on which to provide the tenant additional time to dispute the one month Notice to End Tenancy for Cause?

Is the landlord entitled to an Order of Possession for the rental unit?

Background and Evidence

On July 9, 2010 the tenant was involved in an incident involving the resident manager. The nature of this disturbance included the tenant using foul language and threats. This event was witnessed by two other employees of the landlord. As a result of this event the landlord issued the tenant a one month Notice to End Tenancy for Cause on the basis that the tenant had unreasonably interfered with or disturbed another occupant or the landlord. The effective date of the notice to end tenancy was August 31, 2010.

The landlord has provided written statements from the individuals involved who confirm that the tenant was served with the notice to end tenancy on July 13, 2010. In addition to the notice to end tenancy on the proper form, the tenant was also provided with a written letter of the same date. In this letter the author identifies the incident on July 9, 2010 and states that the events were contrary to the requirements of the tenancy agreement and therefore the tenant was being served with the notice to end tenancy.

The landlord submits that both the letter and the notice to end tenancy were given to the tenant in person in an envelope on July 13, 2010.

The tenant denies receiving the notice to end tenancy in the letter given to him on July 13, 2010. According to the tenant's letter written to the landlord on July 17, 2010 the tenant did not open the envelope and therefore was not aware that a notice to end tenancy was issued.

The landlord wrote a response to the tenant on July 28, 2010. In this second letter the landlord specifically states that the eviction order served on the tenant on July 13, 2010 would not be rescinded. The landlord was open to considering extenuating medical circumstances which led to the events of July 9, 2010. The tenant never provided any medical documentation in support of extenuating medical circumstances.

The tenant responded on August 10, 2010 where he largely addresses the events of July 9, 2010. However, in the letter the tenant comments that he believes that the relief manager is using the event to get the tenant out of the rental unit in some form of personal pursuit. This statement seems to imply that the tenant is aware that the landlord intends to pursue with the eviction. However, the tenant goes on to state in the letter that he still hasn't read the letter of July 13, 2010.

The tenant submits that he did not become aware of the actual notice to end tenancy until approximately August 12 when he accessed his mailbox. The mailbox is in the residential building and the tenant does not regularly use it. In fact, the landlord confirmed that the tenant apparently does not have a key and they had to change the lock on the mailbox to provide the tenant with a new key. The landlord denies putting the notice to end tenancy in the mailbox.

The tenant did not involve his son until approximately August 12, 2010. The tenant's son first learned of the eviction notice at this point and proceeded to file this application for Dispute Resolution. According to the tenant's testimony the tenant did not open any of the letters given by the landlord and was unaware of the notice to end tenancy until he went to discuss the situation with his son.

The landlord rejected the tenant's claim that he was unaware of the notice to end tenancy and denies that the notice was put into the tenant's mailbox. The landlord stated that both the notice to end tenancy and the letter were given to the tenant in person on July 13, 2010. The landlord requested an Order of Possession and was agreeable to an effective date of October 31, 2010.

Analysis

Section 66 of the *Act* provides the director authority to extend a time limit only in exceptional circumstances. Exceptional circumstances require that the failure to meet the statutory time limit must be strong and compelling and supported by persuasive evidence.

Based on the evidence and testimony before me, I am not persuaded that the tenant missed the 10 day time limit to file an application to dispute the notice to end tenancy due to exceptional circumstances. Rather, I am satisfied that the tenant attempted to avoid the situation by not reviewing the documents served upon him on July 13, 2010.

I am not persuaded that the notice to end tenancy was placed in the tenant's mailbox. I accept on the balance of probabilities that the notice to end tenancy was provided along with the letter of July 13, 2010. I find that the tenant did not review the notice until after his attempts to resolve the dispute in writing failed and it became apparent that he would be required to vacate. It was only at this point that the tenant opened the letter containing the notice to end tenancy and sought assistance from his son.

While I appreciate the tenant's attempt to resolve the matter through an alternative process, he was legally obligated to respond to the notice to end tenancy within the 10 day time frame required by the *Act*. The test for exceptional circumstances has not been met and I deny the tenant's request for additional time to dispute the notice to end tenancy.

As a result, I grant the landlord's request for an Order of Possession on the grounds that the one month Notice to End Tenancy for Cause is valid. The tenant will be required to vacate the rental unit as of October 31, 2010 by 1:00 p.m.

Conclusion

I deny the tenant's application requesting additional time to dispute the one month Notice to End Tenancy for Cause. I find that the notice to end tenancy remains in force and effect.

I have issued the landlord an Order of Possession for the rental unit effective **October 31, 2010 at 1:00 p.m.** pursuant to section 55(3) of the *Act*. The Order must be served on the tenant and may be filed in 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: October 13, 2010.

Dispute Resolution Officer