



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent. The tenant also applied for more time to do so and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that the ten day notice to end tenancy was served to a guest of hers who then passed it on to her, on July 03, 2011. The tenant applied to dispute the notice on July 11, 2011. The tenant did not follow up on the application and it was cancelled. The tenant stated that she did not hear back from the Residential Tenancy Branch, so on July 27, 2011 she attended the office and made a second application. The tenant has applied for more time to dispute the notice.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on March 01, 2011. The monthly rent is \$1,000.00 due in advance on the first day of the month. On July 03, 2011, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

At the time of the hearing the tenant agreed that she owed the landlord \$2,333.34 in unpaid rent.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on July 03, 2011 and did not make an application to dispute it within the legislated time frame of five days.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing for dispute resolution within the legislated time limit.

Even if the tenant had made application within five days, I have to uphold the notice to end tenancy because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the Notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective two days after service on the tenant. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The tenant must bear the cost of filing her application.

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: August 10, 2011.

Residential Tenancy Branch