

DECISION

Dispute Codes: MT, CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for cause and the tenant applied for an order to set aside this notice and for more time to do so. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to dispute the notice to end tenancy?

Background and Evidence

The tenancy began in October 2007. After receiving several complaints from the other occupants of the building complex, regarding the activities of the tenant on August 19, 2011, the landlord served the tenant with a one month notice to end tenancy for cause dated August 22, 2011, with an effective date of September 30, 2011.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant. The notice to end tenancy was served in the standard two page approved form and contains information on how to follow up on such a notice and the timelines in which to do so.

Despite receiving the notice on August 22, 2011, the tenant applied to dispute the notice on September 14, 2011. The tenant stated that upon receipt of the notice, she called the landlord to discuss the issue and he told her not to worry about it. She stated that she understood that the notice was cancelled and that she had no reason to worry about it.

The landlord agreed that he had had a conversation with the tenant on the day that he served the notice to end tenancy, but disagreed that he gave her any instructions or misleading information that would lead her to believe that the notice to end tenancy was cancelled.

The tenant stated that on September 12, 2011, she received a notice giving her information on what she was required to do upon moving out of the rental unit. She contacted the landlord who confirmed that the tenancy was ending on September 30, 2011. Two days later the tenant applied to dispute the notice to end tenancy to end tenancy.

The landlord filed several letters of complaint from other occupants of the complex along with letters of apology from the tenant regarding prior disturbances, warning letters from the landlord and declarations signed by the tenant to avoid causing disturbances in the building complex. These letters are pursuant to various incidents that occurred through the tenancy.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for cause on August 22, 2011. The tenant did not apply to dispute the notice until September 14, 2011, a full 24 days after receiving the notice.

Section 47(5) of the Act provides that tenants have 10 days in which to dispute a one month notice to end tenancy, failing which they are conclusively presumed to have accepted the end of the tenancy. The tenant has applied for more time to do apply to dispute the notice. I am unable to grant the tenant more time to make her application without proof that exceptional circumstances prevented her from complying with the statutorily prescribed timeframe.

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 to dispute a notice to end tenancy in the required time 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 and I therefore dismiss the tenant's application and uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. 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 on or before **1:00p.m.on October 31, 2011.**

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 12, 2011.

Residential Tenancy Branch