



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNQ

Introduction

This hearing dealt with an application by the tenant to allow a tenant more time to make an application and to set aside a notice to end tenancy.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began January 1, 1998 and is a 4 bedroom, subsidized rental unit; the tenant paid a security deposit of \$525.00.

On September 9, 2011 the landlord served the tenant with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Housing:

- The tenant no longer qualifies for the subsidized rental unit.

The tenant testified that she had not filed an application to dispute the 2 month notice to end tenancy until November 29, 2011 because she did not know where to go. The tenant stated that she had also been advised by the landlord to get an advocate to help her dispute the notice but that she had not been able to find one. The tenant stated that she did not have a phone to call the Residential Tenancy Branch for information and that she had not been aware of where any Residential Tenancy Branch offices were located.

The tenant acknowledged that she had been in the lower mainland and working and that there had not been any exceptional circumstances such as hospitalization that had kept her from filing her application within 15 days as outlined on page 2 of the notice.

As the tenant has not provided evidence to substantiate the request for more time to file an application, this portion of the tenant's application is dismissed without leave to reapply.

As the tenant did not dispute the 2 month notice to end tenancy within the required 15 day time period as outlined on page 2 of the notice, the landlord's notice to end tenancy remains valid and in full force and effect.

The landlord testified that as the tenant remains in the rental unit that per section 55 of the Residential Tenancy Act he would like to request an order of possession for the rental unit with an order of possession date of January 15, 2012.

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant has not met the burden of proving that there were exceptional circumstances that kept the tenant from disputing the notice to end tenancy within the required 15 day time period as outlined in section 49.1 (5) of the Act. Therefore the tenant will not be granted more time to file an application and the landlord's notice to end tenancy is in effect.

Based on the above, matters related to the tenants' dispute of the notice to end tenancy will not be heard.

Section 49.1(5) of the Act states that **within 15 days of receiving** a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Housing, a tenant must apply for dispute resolution. If the tenant fails file to dispute the notice, then under section 49.1(6)(a)(b) of the Act they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Residential Tenancy Policy Guideline 36 Extending a Time Period speaks to: Notice to End - Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

The tenant's application is hereby dismissed without leave to reapply.

The landlord per section 55 of the Act has been granted an order of possession with a tenancy end date of January 15, 2012.

Conclusion

The tenant's application is dismissed in its entirety.

The landlord has been granted an order of possession with a tenancy end date of January 15, 2012.

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: December 14, 2011.

Residential Tenancy Branch