



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPB, OPC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an extension of time in which to make her application and a cross-application by the landlord for an order of possession.

Issue to be Decided

Should the tenant be granted more time in which to make her application to dispute the notice to end tenancy?

Background and Evidence

The parties agreed that the tenant received a one month notice to end tenancy on November 8, 2011. On November 28, the tenant applied to dispute the notice. When asked why she had delayed in disputing the notice, the tenant and her advocate explained that because she could not afford to pay the filing fee, she had to make her application in person as she could not apply for a fee waiver online. She stated that she originally attended at a Service Canada office only to learn that she needed to either attend at a Service BC office or at the Residential Tenancy Branch in Burnaby. She claimed that obtaining bus fare was also difficult for her.

Analysis

The Act specifically provides a 10 day timeframe in which a tenant can apply to dispute a one month notice to end tenancy. The definitions section of the Residential Tenancy Rules of Procedure provides that when documents must be provided to the Residential Tenancy Branch, weekends and holidays are not included in the calculation of days. Using this means of calculation, the tenant had to make her application no later than November 23. The tenant filed her claim 5 days later, on November 28. Section 66(1) of the Act permits me to extend the time in which to make an application to dispute a notice to end tenancy only in exceptional circumstances. The tenant was aware from

the time that she received the notice that she had to file a claim to dispute it and while the delay may not have been intentional, these difficulties should have been anticipated. I am unable to find that exceptional circumstances prevented the tenant from filing her application within the statutorily prescribed timeframe and accordingly I dismiss the claim for an extension of time. Section 47(5) provides that when a notice is not disputed within the prescribed timeframe, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I therefore dismiss the tenant's application.

I find that the landlord is entitled to an order of possession and I grant the landlord a formal order which may be filed in the Supreme Court for enforcement. I find that as section 55 permits the landlord to make an oral request for an order of possession, the landlord's application was unnecessary and therefore the landlord should bear the filing fee.

Conclusion

The tenant's application is dismissed and the landlord is granted an order of possession.

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 13, 2011

Residential Tenancy Branch