



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end the tenancy (the "Notice"). Both parties participated in the conference call hearing.

At the hearing, the tenant asked to amend his claim to include a claim for more time to make his application to set aside the Notice. The landlord objected to this amendment. I have determined that it is appropriate to allow the amendment.

Issue to be Decided

Should the tenant be granted more time in which to file his application to dispute the Notice?

Background and Evidence

At issue is a Notice which purports to end the tenancy for cause. The cause alleged is that the tenant has put the landlord's property at significant risk and that he has caused extraordinary damage to the rental unit. The tenant acknowledged having received the Notice on November 25 but argued that because it was posted on the door of the rental unit, it was not deemed received until November 28.

The tenant filed his dispute on December 12. When asked why he had not filed the dispute within 10 days of the date he received the Notice, the tenant replied that he had been out of town for one week, he had difficulty reading the Notice and it took some time for him to secure an advocate to assist him.

Analysis

Section 66(1) permits me to extend a time limit only in exceptional circumstances. I find that although the Act deems receipt of the Notice on November 28 as it was posted on the door of the rental unit, the tenant has rebutted the presumption of service by acknowledging that he received it on November 25.

I am unable to find that exceptional circumstances prevented the tenant from filing his application within the statutorily prescribed timeframe. With his evidence, the tenant filed a note from his doctor written on November 30 which offers a medical diagnosis. It is clear that this note was obtained specifically for the purpose of rebutting the landlord's allegations and I find that even if the tenant had difficulty reading the Notice, he was aware that his tenancy was in jeopardy at least by November 30 and he was in town on that date. I find that as he was gathering rebuttal evidence at that point, he knew or should have known that he needed to file his claim and that if he required the services of an advocate, they should be secured quickly.

In the absence of exceptional circumstances preventing the timely filing of his dispute of the Notice, I dismiss the claim for an extension of time. I find that as the tenant did not file a dispute within 10 days of having received the Notice, pursuant to section 47(5)(a) he is conclusively presumed to have accepted that the tenancy has ended and I dismiss the claim for an order setting aside the Notice. I have not considered the Notice on its merits.

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, 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.

As the delay in scheduling a hearing has resulted in this decision being issued just one day before the effective date of the Notice, I find it appropriate to end the tenancy on January 31, 2012 and have made the order effective on that date.

Conclusion

The tenant's claim 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 30, 2011

Residential Tenancy Branch