



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MT, CNC, FF

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenant.

The landlord's application filed October 11, 2011 seeks:

1. An Order of Possession; and
2. Recovery of the filing fee.

The tenant's application filed October 14, 2011 seeks:

1. More time to make an application to dispute a Notice to end Tenancy; and
2. To dispute a Notice to End Tenancy given for cause.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

1. Has the tenant proven that extraordinary circumstances exist such that the time for filing his application to dispute a Notice to End Tenancy should be extended?
2. Does the landlord have cause to end this tenancy?
3. Should the landlord recover the filing fee paid for this application?

Background and Evidence – Tenant's Application for More Time

The landlord supplied evidence that the Notice to End Tenancy given for cause was served on the tenant by sending it via registered mail on September 22, 2011. The tenant provided evidence in the form of airline boarding passes showing that he left Victoria for Saskatoon on September 22, 2011 and did not return to Victoria until October 7, 2011. The tenant then filed his application seeking to cancel the Notice to End Tenancy on October 14, 2010.

Analysis and Decision - Tenant's Application for More Time

I will accept the tenant's evidence that he was not served with the Notice to End Tenancy until October 7, 2011. The tenant had 10 days from the date of service to file an Application for Dispute Resolution, having filed his application on October 14, 2011 and I therefore find that the tenant filed his application within the appropriate time limits.

Background and Evidence

The landlord testified that the Notice to End Tenancy for Cause was issued because the tenant is repeatedly late paying rent. The tenant's rent was originally \$771.00 which included a \$25.00 parking fee. The rent was later reduced to \$746.00 when the tenant no longer needed a parking stall. The landlord supplied a statement of the rental payments detailing the late payments. The statement also shows that on four occasions since April 2011 the tenant's rent cheques were returned due to insufficient funds. Further, with respect to April's rent, the cheque supplied by the tenant to cover one NSF cheque was also returned due to insufficient funds.

The tenant says he originally supplied the landlord with post-dated cheques for the \$771.00 and despite the fact that he no longer needed the parking space and his rent was reduced to \$746.00 the landlord still attempted to cash the cheques for \$771.00 and this is the reason the cheques were returned NSF.

The landlord responded that any over payments of rent were applied to the tenant's account which was in arrears for late payment fees and NSF charges as shown on the statement provided.

Analysis

Policy states that three late payments of rent is sufficient cause for the issuance of a Notice to End Tenancy for repeated late payment of rent. The tenant provided no evidence as to why he did not issue new post-dated cheques for the lower amount and therefore the landlord had no alternative but to cash the cheques they had. If the tenant did not wish those cheques to be cashed he should have provided new cheques. Further, while it may be understandable that given the change in the rental amount that one cheque might be returned due to insufficient funds during the change-over, when four cheques are returned due to insufficient funds I find the landlord was reasonable in issuing a Notice to End Tenancy for repeated late payment of rent.

I therefore find that the landlord is entitled to an Order of Possession effective 2 days after service on the tenant. If the tenant does not comply with that Order the landlord may enforce the Order of Possession as an Order of the Supreme Court of British Columbia.

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: November 03, 2011.

Residential Tenancy Branch