



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC MNDC FF

Preliminary Issue

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenant's request for more time to make his application and to set aside, or cancel the Landlord's Notice to End Tenancy for cause, and I dismiss the balance of the Tenant's claim with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for more time to make his application, to obtain an Order to cancel a notice to end tenancy issued for cause, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

Issue(s) to be Decided

1. Should the Tenant be granted more time to make his application to dispute a 1 Month Notice issued for cause?
2. If so, should the 1 Month Notice be cancelled?

Background and Evidence

The parties confirmed the tenancy began as a fixed term agreement starting May 1, 2008 and that it switched to a month to month tenancy after April 30, 2009. Rent is

payable on the first of each month in the amount of \$2,100.00 and on March 29, 2008 the Tenant paid \$1,050.00 as the security deposit.

Upon review of the Tenant's application for dispute resolution the Tenant confirmed that he had applied to cancel a notice to end tenancy issued for cause. When asked when he received the 1 Month Notice the Tenant stated that he was not able to find the notice in his mounds of paperwork.

The Landlord's Agent affirmed that one copy of the 1 Month Notice was served via registered mail on July 17, 2012 and the tracking number was RWXXXXXXXXCA and a second copy was posted to the rental unit on July 17, 2012.

The Tenant submitted that he did not make an application to cancel the 1 Month Notice sooner because he had been speaking with numerous lawyers. I asked what guidance his lawyers gave him and he stated they all told him to contact the *Residential Tenancy Branch* or look at all the information that is available on line. I asked why he did not contact the *Residential Tenancy Branch* sooner. The Tenant replied that he did not know the process and he did not know how to make an application. He later clarified that he printed the application, completed it and submitted it to his local Service BC office.

The owner, M.N., submitted that the copy of the Tenant's application for dispute resolution he received indicated the Tenant received the Notice to end tenancy on August 10, 2012. The Agent clarified that date would pertain to the 10 Day Notice to end tenancy that was issued on August 9, 2012 to the Tenant.

In closing the Agent submitted that they had issued the Notices to end tenancy because they need to have the Tenant move and they were seeking to get an Order of Possession.

Analysis

Neither the Tenant nor the Landlord provided a copy of the 1 Month Notice into evidence. Both parties confirmed the issuance and receipt of the Notice and the Tenant made application for dispute resolution to have this Notice cancelled; therefore I accepted that the Tenant was served a 1 Month Notice to end tenancy for cause.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The Tenant affirmed he received a 1 Month Notice however he was not able to provide testimony as to the date the Notice was actually received. Accordingly, in the absence of evidence to the contrary, I accept the Agent's submission that the 1 Month Notice was posted to the rental unit on July 17, 2012 and sent via registered mail on July 17, 2012. Therefore, the Tenant is deemed to have received the posted Notice on July 20, 2012 (3 days after it was posted) and the Notice sent by registered mail by July 22, 2012, (5 days after it was mailed) in accordance with section 90 of the Act.

The evidence supports the Tenant did not make application to dispute the Notice until August 15, 2012, twenty-four days after the latest date the Tenant is deemed to have received the 1 Month Notice. Accordingly, I find the Tenant did not file his application to dispute the Notice within the required timeframes set out in Section 47(4) of the Act.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the Act but only in exceptional circumstance. The *Residential Tenancy Policy Guideline # 36* defines exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

*Some examples of what might **not** be considered "exceptional" circumstances include:*

- *the party who applied late for arbitration was not feeling well*
- *the party did not know the applicable law or procedure*
- *the party was not paying attention to the correct procedure*
- *the party changed his or her mind about filing an application for arbitration*
- *the party relied on incorrect information from a friend or relative*

The reasons given by the Tenant on why he did not apply within the prescribed timeframes does not constitute exceptional circumstances. Accordingly, I dismiss the Tenant's application for MT and I dismiss his application to cancel the 1 Month Notice to end tenancy for cause.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the

Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession.

Conclusion

I HEREBY DISMISS the Tenant's request for a monetary order, with leave to reapply.

The Landlord has been awarded an Order of Possession effective two days upon service to the Tenant. This Order is legally binding and may be enforced through Supreme Court.

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: September 18, 2012.

Residential Tenancy Branch