



Dispute Resolution Services

Page: 1

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 to set aside a notice to end tenancy for cause and for more time to do so. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Has the tenant filed her application on time, or were there exceptional circumstances that prevented her from filing on time?

Background and Evidence

The landlord served the tenant with a notice to end tenancy for cause on June 29, 2012. The notice was served in the appropriate two page format. The tenant agreed that she received the two page notice on June 29, 2012.

The reasons for the notice are that the tenant or a person permitted on the property by the tenant:

- has significantly interfered with or disturbed the landlord or another occupant,
- has put the landlord's property at serious risk
- has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant stated that the end date of the tenancy as per the notice to end tenancy for cause was August 31, 2012. The tenant testified that she was not aware that the timeline of ten days within which she could dispute that notice, started from the date of receipt of the notice. Because the effective date of the notice was at the end of August, she assumed that applying to dispute the notice on August 22 was within the legislated time.

Other than the above testimony, the tenant did not have any evidence to support the reason for not making application within the legislated time.

Analysis:

Under section 47(4) of the Act, the tenant had to dispute the notice within 10 days, or by July 09, 2012. The tenant filed her application on August 22, 2012, some 44 days past the time required by the Act to file it. Based on the above, the evidence and testimony, and on a balance of probabilities, I find the tenant failed to file her application to dispute the notice, in a timely manner.

Policy guideline 36 for the Act sets out that an Arbitrator may extend or modify a time limit ***only in exceptional circumstances***. The guideline explains 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 by the required time must be very strong and compelling. Furthermore, a "reason" without any force of persuasion is merely an excuse. Therefore, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find the tenant had insufficient evidence of a strong or compelling reason, or of exceptional circumstances, which would allow me to extend a time limit established by the Act.

Therefore, during the course of the hearing I dismissed the application of the tenant. When the tenant's application was dismissed the landlord orally requested an order of possession effective October 15, 2012. Under section 55 of the Act, I must grant that request. I grant and issue the Landlord an order of possession effective on or before 1:00p.m. on October 15, 2012. This order may be enforced in the Supreme Court of British Columbia.

Conclusion

I grant the landlord an order of possession effective 1:00p.m. on October 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: September 25, 2012.

Residential Tenancy Branch