



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, MT, CNC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on September 28, 2012 for:

1. More time to make an application to cancel a Notice to End Tenancy – Section 66; and
2. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on September 26, 2012 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application to dispute the notice to End Tenancy?

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started in August 2011. The Landlord states that on August 24, 2012 the Tenant was served with a one month Notice to End Tenancy for Cause (the “Notice”) by posting the Notice on the door of the Tenant’s unit. The Tenant states that she was not at the unit between approximately August 21 and September 30, 2012 as she was at a

friend's home out of town. The Tenant provided the name and phone number of the person with whom she stayed during this period of time and asked to call this person as a Witness however this person could not be reached by the conference operator. The Tenant states that she did not receive the Notice until September 30, 2012.

The first named Landlord who appeared states that the Tenant called the Landlord on August 24, 2012 and was angry about the Notice and that further the Tenant was seen on occasion at the unit during the period that the Tenant stated being away. The second named Landlord who appeared also states that the Tenant was seen on September 26, 2012 when the Tenant was provided a receipt for the rent. The Tenant states that the receipt was slipped under the door and that the Tenant was downstairs at the time. The Tenant acknowledges that she was aware the Landlord had given her the Notice but that she did not get the official document.

Analysis

Section 47 of the Act provides that a Notice to end Tenancy may be disputed by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 66 of the Act provides that a time limit established by the Act may be extended only in exceptional circumstances. Given the Tenant's conflicting evidence of her whereabouts between August 21 and September 30, 2012, I find the Landlord's evidence to be more persuasive. Accepting the Landlord's evidence of the Tenant's presence at the unit during this period and the conversation with the Tenant on the day the Notice was placed on the door, and I find on a balance of probabilities that the Tenant received the Notice on August 24, 2012. I do not consider the Tenant's evidence sufficient to establish that exceptional circumstances stopped the Tenant from making the application to dispute the Notice and I therefore dismiss the Tenant's application. I find that the Landlord is entitled to an Order of Possession and to recovery of the \$50.00 filing fee. I order the Landlord to retain \$50.00 from the security deposit.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I order the Landlord to retain \$50.00 from the Tenant's security **deposit** in satisfaction of the claim

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 05, 2012.

Residential Tenancy Branch