



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, as well as for an extension of time to apply to cancel the notice. The tenant, an advocate for the tenant and two agents for the landlord participated in the teleconference hearing.

Preliminary Issue – Extension of Time

Tenant's Submissions

The tenant stated that she was not sure when she was served with the notice to end tenancy. The tenant did not know her rights, and thought that she had to move out of the rental unit by the end of the month. On October 11, 2012, the tenant saw her mental health case worker and showed her the eviction notice. The case worker then assisted the tenant to apply to dispute the eviction notice. The case worker stated that she has acted on the tenant's behalf in the past when dealing with the landlord. The case worker also stated that the tenant meets with a case worker on a periodic basis, but she is generally quite independent.

Landlord's Response

The landlord personally served the tenant with the notice to end tenancy on September 28, 2012. On that date, the landlord explained to the tenant the reason for serving the notice, and the tenant responded that she would call her case worker.

Analysis

The tenant is not entitled to an extension of time. A tenant who is served with a notice to end tenancy for cause must apply to dispute the notice within 10 days of receiving the notice. In this case I find that the tenant received the notice on September 28, 2012, and she did not apply to cancel the notice until 13 days later. The tenant's advocate did

not provide sufficient evidence to establish that the tenant was mentally incompetent to understand and act on the notice, and the advocate's own testimony was that the tenant is fairly independent. The advocate did not provide sufficient evidence to establish that she, as the tenant's case worker, was the agent for the tenant in all circumstances and that the landlord therefore ought to have instead served the notice to end tenancy on the case worker as agent for the tenant.

Under section 66(1) of the Residential Tenancy Act, an extension of time can only be granted where the applicants have established that there are exceptional circumstances. I find that the applicant failed to prove that exceptional circumstances prevented her from filing for review and I therefore dismiss the tenant's application to cancel the notice to end tenancy for cause.

During the hearing the landlord made a request for an order of possession. Under section 55 of the Act, upon the request of a landlord I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I grant the landlord an order of possession.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective November 30, 2012. 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.

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 2, 2012.

Residential Tenancy Branch