



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on the tenant's application of October 31, 2012 seeking more time to make this application and to have set aside a Notice to End Tenancy for cause served by registered mail sent on September 27, 2012 and setting an end of tenancy date of October 31, 2012.

Issue(s) to be Decided

Has the tenant provide sufficient evidence of exceptional circumstances to warrant an extension of time to bring this application? If so, should the Notice to End tenancy be set aside or upheld.

Background and Evidence

This tenancy began on September 1, 1999. Rent was \$795 per month at the beginning of the tenancy and the tenant paid a security deposit of \$397.50.

The landlord submitted into evidence a copy of the Notice to End Tenancy for cause dated September 27, 2012 and a Canada Post tracking number verifying that the notice had been sent by registered mail on September 27, 2012, a Notice card was delivered on October 2, 2012 and the registered mail was picked up by the tenant on October 17, 2012.

The tenant made explanation that she had received a notice card advising of the registered mail, had placed it in her purse with intentions of picking it up when she was near the post office, as she did on October 17, 2012. The tenant then waited until October 31, 2012 to make the present application to challenge the Notice to End Tenancy.

Analysis

Section 47(4) of the Act provides 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.”

Section 90 of the *Act* states that documents sent by registered mail are deemed to have been received five days later which would have been October 2, 2012 which, by that measure, would have permitted the tenant until October 12, 2012 to make her application. Even by the actual date of pickup of the registered mail on October 17, 2012, the tenant would have had until October 27, 2012 to make application which was not made until October 31, 2012. Therefore, the application is out of time.

Section 66 of the *Act* permits the director's delegate to extend a time limit established by the *Act* only in exceptional circumstances, an example of which provided in the Residential Policy Guideline 36 is hospitalization.

The guideline states that:

“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.”

In the present matter, the applicant has provided no evidence of exceptional circumstances that would permit me to extend the 10-day time limit to bring this application.

Therefore, I decline to grant an extension of time and must dismiss the application as out of time.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when an application to set aside a notice to end tenancy is dismissed.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on December 31, 2012.

Conclusion

The application is dismissed as out of time without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 31, 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: December 04, 2012.

Residential Tenancy Branch