

## **DECISION**

Dispute Codes: MT CNC FF O

### **Introduction**

The tenant applied under the *Residential Tenancy Act* (the “Act”) to allow a tenant more time to make an application to cancel a 1 Month Notice to End Tenancy for Cause, to cancel a 1 Month Notice to End Tenancy for Cause, to recover the filing fee, and for “other”, although details of “other” were not provided in the details of dispute.

The tenant and two agents for the landlord (the “agents”) attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The parties agreed that they had both received the evidence packages from the other party and had the opportunity to review the evidence. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

### **Issues to be Decided**

- Is the tenant entitled to more time to make an application to cancel a 1 Month Notice to End Tenancy for Cause under the *Act*?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?

### **Background and Evidence**

A month to month tenancy began on January 1, 2011. Monthly rent in the amount of \$600.00 is due on the first day of each month. A security deposit of \$300.00 and a pet damage deposit of \$300.00 was paid at the start of the tenancy.

The tenant confirmed that he was served with a 1 Month Notice to End Tenancy for Cause (the “Notice”) on November 15, 2012. The tenant testified that he disputed the Notice on November 28, 2012 and later changed his testimony indicating that he disputed the Notice within 10 days of being served, on November 25, 2012.

The application for dispute resolution filed with the Residential Tenancy Branch is dated December 11, 2012. The tenant has asked for more time to allow for an application to dispute the Notice.

The tenant later testified that he attended a government agent office on or about November 25, 2012 and that someone in that office lost his application and that it was the governments fault for losing his application. I asked the tenant if he had any evidence to support that he attended a government agent office on November 25, 2012. The tenant stated that he did not submit any evidence as he has been busy with his work.

The tenant was advised that to be successful with an application for more time to dispute the Notice, he would have to provide evidence in support of “exceptional circumstances” based on section 66 of the *Act* and Residential Policy Guideline 36 – Extending a Time Period. The tenant stated that he was unable to dispute the Notice due to his work schedule.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenant’s request to allow more time to make an application to cancel the Notice -** Section 66 of the *Act* and Residential Policy Guideline 36 – Extending a Time Period state that an Arbitrator may extend or modify a time limit established by the *Act* **only in exceptional circumstances**. An example of an exceptional circumstance is that the party making the request is in the hospital at all material times.

In the matter before me, the tenant’s testimony was inconsistent in that he offered several dates when he allegedly filed his application for dispute resolution. The first date provided was November 28, 2012. The second date provided was November 25, 2012 and the date on the application reads “December 11, 2012”. The tenant testified that he could not dispute the Notice due to his work schedule.

**I find** that the tenant has failed to provide any evidence in support of an exceptional circumstance that would justify the tenant being granted more time to make an application to cancel the Notice. As a result, **I dismiss** the tenant’s application for more time to make an application to dispute the Notice due to insufficient evidence, without leave to reapply.

Section 47 of the *Act* states:

(4) 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.**

(5) If a tenant who has received a notice under this section **does not make an application for dispute resolution in accordance with subsection (4),** the tenant

(a) is **conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

(b) **must vacate the rental unit by that date.**

[emphasis added]

**I find** the tenant failed to make an application for dispute resolution within 10 days of November 15, 2012, the date the tenant confirmed he received the Notice. Section 47(5) of the *Act*, states that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice if they do not dispute the Notice within 10 days after the date the tenant received the Notice. The effective date on the Notice is December 31, 2012 which has already lapsed.

The agents requested an order of possession verbally during the hearing. Section 55 of the *Act* states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

### Conclusion

I dismiss the tenant's application to allow the tenant more time to dispute the Notice. As a result, I do not need to consider the remainder of the tenant's application as the tenant is conclusively presumed to have accepted that the tenancy ended on December 31, 2012.

I grant the landlord an order of possession effective **two days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 16, 2013