



Dispute Resolution Services

Page: 1

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 and an extension of time to make the application. The tenant and two agents for the landlord participated in the teleconference hearing.

The tenant had named one of the two agents as the respondent landlord. In the hearing, the landlord's agents indicated the correct name of the landlord, and the tenant did not dispute an amendment to her application to reflect the correct name of the landlord.

The tenant stated that she did not receive the landlord's second package of evidence. The landlord stated that the evidence was sent by registered mail and posted on the tenant's door on June 18, 2013. As the evidence in question comprised the landlord's written response to the tenant's evidence, I determined it was appropriate to exclude that evidence and hear the landlord's testimony, if necessary. It was ultimately not necessary to hear the landlord's testimony on any point other than the issue of the service of the notice to end tenancy.

Preliminary Issue – Extension of Time

On May 23, 2013, the tenant applied to cancel a notice to end tenancy for cause issued April 19, 2013. The tenant also applied for an extension of time to make the application.

The landlord's agents stated that they were both present at the rental unit on April 19, 2013, and after they knocked on the tenant's door but received no response, they posted the notice to the rental unit door. The landlord stated that on the morning of Monday, April 19, 2013, the landlord found a letter from the tenant in their office, in which the tenant stated that she was going away for two weeks or more. However, the landlord saw the tenant on the premises on April 21, 23 and 26. One agent, KM, stated

that he served a second copy of the notice on the tenant at the request of a police officer on May 22, 2013.

The tenant stated that she did not receive a copy of the notice to end tenancy until May 22, 2013. The tenant stated that she went away on April 19, 2013 and did not return until May 22, 2013. On April 19, 2013, she put a letter in the office mail slot, informing the landlord that she would be away for two weeks or more. When I first asked the tenant where she went, she did not wish to provide an answer. The tenant then stated that she went away for some holidays for her work. She then stated that she went away to Campbell River and camped. Finally, she stated that she went with a group of people to an aboriginal function. The tenant stated that she returned on May 22, 2013 because she received a voice mail from her doctor about some test results. The tenant could not satisfactorily answer my question about how she retrieved her voice mail message while she was camping. When I asked the tenant what she had to say about the landlord's testimony that they saw the tenant on the premises at the time she claimed to be away, she said that she had no comment.

I found that the landlord's evidence regarding service of the notice to end tenancy was clear and reliable. The tenant's evidence on this point, however, was contradictory and unsupported by evidence. I therefore found that the tenant was deemed served with the notice to end tenancy on April 21, 2013, and the tenant did not provide sufficient evidence to establish that extraordinary circumstances prevented her from making an application to dispute the notice within the required time frame. I dismissed the tenant's application.

In the hearing the landlord verbally requested an order of possession effective July 31, 2013. When a tenant applies to cancel a notice to end tenancy and the tenant's application is dismissed, if the landlord verbally requests an order of possession in the hearing, I must grant it. 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 July 31, 2013. 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: June 24, 2013

Residential Tenancy Branch