



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to cancel a Notice to End tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to set aside the Notice to End Tenancy for Cause and should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2006 and that the Tenant and a second party, who is the Tenant's mother, are named on the written tenancy agreement.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the door of the rental unit, which declared that the Tenant and the second tenant named on the tenancy agreement must vacate the rental unit by July 31, 2013. The Resident Manager stated that the Notice was posted on June 28, 2013 and the Tenant stated that she located the Notice to End Tenancy on June 28, 2013.

The reasons cited for ending the tenancy on the Notice to End Tenancy were that the Tenant has allowed an unreasonable number of occupants in the unit; that the Tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord; and the Tenant has breached a material term of the tenancy agreement that was not corrected within a

reasonable time after receiving written notice to do so.

The Tenant stated that she did not file an Application for Dispute Resolution until July 09, 2013, in part, because she had the flu that week. She stated that she was not hospitalized as a result of her illness and she has no medical report to corroborate that she was ill.

The Tenant stated that she did not file an Application for Dispute Resolution until July 09, 2013, in part, because she did not understand that she only had ten days to apply to dispute the Notice to End Tenancy until she spoke with an advocate at VICOT. She stated that she did not seek assistance from the Residential Tenancy Branch.

The Landlord argued that even if the Tenant was not able to dispute the Notice to End Tenancy within ten days, the other tenant named on the tenancy agreement and the Notice to End Tenancy could have disputed the Notice to End Tenancy. The Resident Manager stated that she knows the other tenant named on the tenancy agreement was aware the Notice had been served, as the other tenant phoned her about the Notice on July 12, 2013.

The Tenant stated that the other tenant is her mother; that the other tenant lives in Prince George but visits frequently; that she informed her mother about the Notice to End Tenancy; and that her mother told her to dispute the Notice to End Tenancy.

Analysis

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation, would be that the Tenant was hospitalized for an extended period after receiving the Notice.

I find that the Tenant has failed to establish that having the flu prevented her from disputing the Ten Day Notice to End Tenancy within 10 days of receiving the Notice. In reaching this conclusion I was heavily influenced by the absence of any medical evidence that corroborates her testimony that she had the flu and by the absence of any medical evidence that shows that even if she had the flu, the flu rendered her physically unable to file a Notice to End Tenancy within ten days. I cannot, therefore, conclude that the Tenant had a strong and compelling medical reason for failing to dispute the Notice to End Tenancy within 10 days of receiving the Notice.

I find that failing to understand that she only had ten days to dispute the Ten Day Notice to End Tenancy does not constitute a strong and compelling medical reason for failing to dispute the Notice to End Tenancy within the legislated time period. In reaching this conclusion I was heavily influenced by the fact this information is clearly written on the

Notice to End Tenancy that was served to the Tenant and by the Tenant's acknowledgement that she is able to read English.

In determining that the Tenant's failure to understand that she only had ten days to dispute the Notice to End Tenancy does not constitute a strong and compelling reason for failing to dispute the Notice to End Tenancy within the legislated time period, I was further influenced by the fact that the Residential Tenancy Branch is available to assist the public with questions about tenancies; the Tenant also had access to assistance from VICOT; and the Tenant also had the ability to seek assistance from her mother, who is a co-tenant. Whenever a party receives a legal document the party does not understand, the party should make every effort to seek assistance in a timely manner.

As the Tenant has failed to establish that she has a strong and compelling reason for failing to dispute the Notice to End Tenancy within 10 days of receiving the Notice, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 47(5) of the *Act* stipulates that if a tenant does not dispute a Notice to End Tenancy for Cause within ten days of receiving it, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and that the tenant must vacate by that date. As the Tenant did not dispute the Notice within ten days of receiving it, I find that the Tenant accepted that the tenancy ended on July 31, 2013, pursuant to section 47(5) of the *Act*.

Conclusion

As the Tenant accepted the tenancy ended pursuant to section 47(5) of the *Act*, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, which will be effective on August 31, 2013.

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: August 14, 2013

Residential Tenancy Branch

