



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FATHER DELESTRE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT, CNR, OPR, MNR, FF

Introduction

This hearing dealt with applications by the tenant and the landlord pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for nonpayment of rent and the tenant applied for an order to set aside this notice and for more time to do so. The landlord applied for an order of possession pursuant to this notice and for a monetary order for unpaid rent and the filing fee.

Both parties attended the hearing and had opportunity to be heard.

At the start of the hearing, the landlord informed me that on September 11, 2013, the tenant had paid all rent owed and that he had issued a receipt for use and occupancy only. Therefore this hearing only dealt with the landlord's application for an order of possession and for the recovery of the filing fee.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to dispute the notice to end tenancy?

Background and Evidence

The tenancy began on September 01, 2011. The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size. The tenant's portion of rent is \$425.00 due on or before the first of each month. Prior to moving in the tenant paid a security deposit of \$300.00.

The tenant failed to pay her portion of rent on August 01, 2013, and on August 09, the landlord served the tenant in person with a notice to end tenancy for nonpayment of rent. The notice was in the approved format of two pages. The tenant stated that she did not know that she had only five days to pay rent or dispute the notice. Despite receiving the notice on August 09, 2013, the tenant applied to dispute the notice on August 30, 2013.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy on August 09, 2013. The tenant did not apply to dispute the notice until August 30, 2013, a full 21 days after receiving the notice.

Section 46(5) of the Act provides that tenants have 5 days in which to dispute a ten day notice to end tenancy to end tenancy for non payment of rent, failing which they are conclusively presumed to have accepted the end of the tenancy. The tenant has applied for more time to apply to dispute the notice. I am unable to grant the tenant more time to make her application without proof that exceptional circumstances prevented her from complying with the statutorily prescribed timeframe.

Section 66(1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3). The tenant testified that she did not know that she had only five days to dispute the notice. I do not find exceptional circumstances in this situation and accordingly dismiss the request for an extension of time to apply to dispute the notice. The notice is upheld and the tenancy will end in accordance with the notice. The tenant's claim to set aside the Notice is dismissed.

I find that the landlord is entitled to an 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.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The landlord may retain \$50.00 from the security deposit towards the recovery of the filing fee.

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: September 27, 2013

Residential Tenancy Branch

