



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2167 DUNDAS STREET HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT, CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for cause. The tenant also applied for more time to do so.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Was there a compelling reason that prevented the tenant from making an application to dispute the notice to end tenancy within the legislated time frame? Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The tenancy started on June 01, 2007. The monthly rent is \$440.00 due in advance on the first day of the month. On August 26, 2013, the landlord served the tenant with a notice to end tenancy for cause by posting it on his front door. The tenant is deemed to have received the notice on August 29, 2013.

The tenant applied to dispute the notice on September 18, 2013 which is 20 days after having received the notice. The tenant stated that he has ongoing health problems that prevented him from making this application in a timely manner. The tenant also stated that he thought that the landlord was working with him to set aside the notice to end tenancy and therefore he did not have to apply to dispute the notice.

The landlord testified that he told the tenant that he would set the notice aside if he cleaned up the rental unit within 24 hours. The tenant had already been provided with two warning letters prior to the notice to end tenancy.

The landlord testified that upon inspection two weeks after the service of the notice to end tenancy, the tenant had not made any efforts to clean up the clutter in the rental unit which was putting the landlord's property at risk of pest infestations and fire.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for cause on August 29, 2013 and did not make an application to dispute it within the legislated time frame of ten days.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented him from filing for dispute resolution within the legislated time limit. Accordingly I am unable to grant the tenant an extension of time to make this application. The notice to end tenancy is upheld.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective on or before November 30, 2013. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 pm on November 30, 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: October 29, 2013

Residential Tenancy Branch