



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding John Beckett Chartered Acct.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This is the Tenants' application to be allowed more time to file an application to cancel a Notice to End Tenancy for Cause (the "Notice") and to cancel the Notice.

The parties gave affirmed testimony at the Hearing.

It was established that the female Tenant served the Landlord with the Notice of Hearing documents by handing the documents to the Landlord. The Landlord acknowledged receiving the documents at some point during the first week of October, 2013. The Tenants did not provide any documentary evidence to the Residential Tenancy Branch, or to the Landlord.

The Tenants acknowledged receipt of the Landlord's documentary evidence.

Preliminary Matter

- Should the Tenants' application to extend the time to file an application to cancel the Notice be granted?

The Tenants indicated on their Application for Dispute Resolution that they received the Notice on September 15, 2013. The Tenants filed their application on October 1, 2013.

The male Tenant testified that he was working and needed to take a day off in order to file the application. He stated that the female Tenant had some health issues.

The Landlord's agent stated that the male Tenant was in prison and could not file. The male Tenant disputed this and stated that he was working.

The Landlord's agent stated that the Tenants had paid for use and occupancy of the rental unit for the month of November asked for an Order of Possession effective November 30, 2013.

Analysis

Section 47 of the Act requires a tenant to file an application to cancel a notice to end tenancy for cause within 10 days after receipt of the notice. Section 47 of the Act also provides that if a tenant does not dispute the notice to end tenancy within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out. Section 53 of the Act provides that if a notice to end tenancy gives an effective date that does not comply with the Act, the notice is deemed to be changed to the earliest date that complies with the Act. In this case, that date is October 31, 2013.

Section 66 of the Act provides me with the authority to extend the time to file an application to cancel a notice to end tenancy, but only in exceptional circumstances.

The Notice also indicates, in part, on page two:

“You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit.”

Based on the Tenants’ testimony, I find that they did not provide sufficient evidence of an exceptional circumstance or serious and compelling reason for not filing the Application on time. Therefore, I dismiss the Tenants’ Application. I find that the effective date of the end of tenancy was October 31, 2010. However, the Landlord seeks an Order of Possession effective November 30, 2013.

Further to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., November 30, 2013.**

Conclusion

The Tenant’s application is **dismissed**.

I hereby grant the Landlord an Order of Possession **effective 1:00 p.m., November 30, 2013.** This 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: November 08, 2013

Residential Tenancy Branch

