



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pendrellis Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened to address a claim by the tenant for an order setting aside a notice to end this tenancy and an order allowing her more time to file her application to dispute the notice. Both parties participated in the conference call hearing.

Issues to be Decided

Should the tenant be granted more time to dispute the notice to end tenancy?
Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant was served with a one month notice to end tenancy for cause on October 20, 2013. The tenant applied to dispute the notice on November 22, 2013. The tenant explained that she did not dispute the notice earlier because she was so distraught upon receiving the notice, that she did not read the first page carefully and did not read the second page at all. The tenant stated that she sought advice from an advocate and a number of lawyers and received different advice from each, some telling her that it was too late to dispute the notice and at least one advising her to file a dispute.

Analysis

The notice in question was served pursuant to section 47 of the Act. Section 47(5) provides that if a tenant who receives such a notice does not file an application for dispute resolution within 10 days of receipt, she is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In this case, the tenant filed her dispute 33 days after she received the notice.

Section 66 of the Act gives me the discretion to extend a time limit only in exceptional circumstances. I do not find the tenant's circumstances to be exceptional. The tenant was given a legal document which had a bold-faced heading stating, "TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE." The tenant was well aware that she had received a legal document and that her tenancy was in jeopardy. In fact, she spent time after having received the notice walking through the neighbourhood to determine what alternative housing was available. I find that the tenant should have been fully aware that action was required in order to dispute the notice and I find that her distress at having received the notice does not meet the criteria for exceptional circumstances as is required by section 66 of the Act. I therefore dismiss the tenant's application for more time to dispute the notice.

The effect of this dismissal is that the tenant cannot dispute the notice and is therefore conclusively presumed under section 47(5) to have accepted that the tenancy has ended.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, 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.

The landlord agreed to extend the effective date of the notice to February 15, 2014. The order of possession is therefore effective on that date.

I note that the tenant repeatedly asked that she be given more time to secure alternate accommodation. At the hearing, I advised the tenant that she is free to negotiate directly with the landlord to request that the order not be enforced on February 15, 2014. The tenant also confirmed that she understands that the landlord is under no obligation to enter into such negotiations and is free to enforce the order on the effective date.

Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession effective February 15, 2014.

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: January 17, 2014

Residential Tenancy Branch

