



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for an order granting more time to make an application to cancel a notice to end tenancy.

The tenant and the landlord's representatives attended the teleconference hearing and at the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence in relation to the tenant's request for additional time to file an application in dispute of the Notice.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order granting more time to make an application to cancel a notice to end tenancy?

If so, is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The landlord testified that they served the tenant a 1 Month Notice to End Tenancy for Cause by personal delivery on March 3, 2014, listing an effective move-out date of April 30, 2014.

The Notice informed the tenant that she had 10 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant was conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

In response to my question, the tenant confirmed receiving the Notice as stated by the landlord. The tenant submitted that she did file an earlier application in dispute of the Notice, but that she forgot to call into the scheduled hearing on April 28, 2014, resulting in a dismissal of the tenant's application. The landlord submitted that they were not present at the April 28, 2014, hearing as they never received notice of the hearing from the tenant.

The tenant was granted leave to reapply in the Decision of another Arbitrator dated April 28, 2014; however, when the tenant filed the present application, she was well outside the time frame for applying.

During the hearing, the landlord requested an order of possession for the rental unit in the event I dismissed the tenant's application.

Analysis

In the case before me, I find the evidence shows that the tenant received the landlord's 1 Month Notice on March 3, 2014, as alleged by the landlord, and therefore was required to file her application in dispute of the Notice by March 13, 2014; instead the tenant's present application was made on April 30, 2014. I note that the tenant's first application was dismissed; however, that application was dismissed and when it was dismissed on April 28, 2014, the tenant was already outside the time frame in which to file another application.

In considering the tenant's request to grant additional time to dispute the landlord's Notice, section 66(1) of the *Residential Tenancy Act*, provides that an extension of time can only be granted where the applicant, the tenant in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times. The tenant offered no proof that this or other exceptional circumstances existed.

Other criteria considered in granting an extension of time include whether the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party or the party has brought the application as soon as practical under the circumstances. I do not find that to be the case here, as the tenant provided no explanation as to why she failed to call into her hearing on her original application. I additionally considered that the landlords stated that they did not receive the notice of the first hearing, and the tenant failed to dispute this contention.

I therefore find that the tenant has failed to prove that exceptional circumstances prevented her from filing an application within 15 days of having been served with the Notice, and I therefore dismiss her application for an extension of time.

As a result, due to the tenant's failure to make a timely application as required by the Act, I therefore dismiss the tenant's application to cancel the 1 Month Notice dated and issued March 3, 2014, as she is conclusively presumed to have accepted that the tenancy ended on April 30, 2014, the effective date of the notice to end tenancy for cause.

Conclusion

The tenant's application is dismissed, without leave to reapply.

As I have dismissed the tenant's application for dispute resolution, under section 55(1) of the Act, I must grant the order of possession to the landlord due to their oral request during the hearing.

I therefore grant the landlord an order of possession for the rental unit effective 2 days after service on the tenant.

This final, legally binding order of possession is enclosed with the landlord's Decision and must be served upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an

order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: June 18, 2014

Residential Tenancy Branch

