



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, CNR
OPC, OPR

Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / and cancellation of a notice to end tenancy for unpaid rent. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that she seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on May 01, 2013. Monthly rent of \$550.00 is due and payable in advance on the first day of each month, and a security deposit of \$275.00 was collected.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated August 01, 2014. The notice was served by way of posting adjacent to the tenant's door on that same date. A copy of the notice is not in evidence. The parties testified that 3 separate reasons are identified on the notice in support of its issuance. The tenant filed an application to dispute the notice on August 15, 2014.

Thereafter, pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**, arising from rent which was unpaid when due on September 01, 2014, the landlord issued a 10 day notice to end tenancy. The parties agree that the notice was personally served on September 03, 2014. A copy of the notice was submitted in evidence. Subsequently, the tenant disputed the notice by way of an amendment on September 04, 2014 to her original application for dispute resolution. The tenant then later made payment of rent in full on September 11, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

1 month notice to end tenancy

Pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, I find that as the 1 month notice was served by way of posting adjacent to the unit door on August 01, 2014, it is deemed to have been received 3 days later on August 04, 2014. Pursuant to section 47(4) of the Act, the tenant had 10 days after receiving the notice to dispute it. The 10th day in this case was August 14, 2014, however, the tenant's application was filed 1 day later on August 15, 2014.

As to the reason(s) why the tenant's application was filed outside the statutory 10 day period available, "GM," the person assisting the tenant testified that while she and the tenant are in contact by telephone, they only see each other once a week. I find that this reason for the late filing of the application does not fall within the range of what are "exceptional circumstances" as contemplated in section 66 of the Act which addresses **Director's orders: changing time limits**.

10 day notice to end tenancy

Section 46(4) of the Act provides that the tenant had 5 days after receiving the notice to either dispute it, or pay the full amount of outstanding rent. In this case, as the notice was personally served on September 03, 2014, the 5th day was September 08, 2014. While the tenant filed an application to dispute the notice within the statutory 5 day period on September 04, 2014, payment of all overdue rent was not made until September 11, 2014.

Section 63 of the Act addresses the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenant will vacate the unit by not later than **November 30, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **November 30, 2014**. This order must be served on the tenant. 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.

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 14, 2014

Residential Tenancy Branch

