Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lynn Valley Lions HOusing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNQ, O

Introduction
This hearing dealt with an application by the tenant for orders setting aside a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit and granting her more time in which to make the application. Both parties appeared and had an opportunity to be heard.

Preliminary Issue(s) to be Decided
Are there exceptional circumstances, as required by section 66(1) of the *Residential Tenancy Act,* which would allow an extension of the time limit for filing this application for dispute resolution?

Background and Evidence
This month-to-month tenancy commenced July 28, 2004. The landlord is a housing society who receives a rent subsidy from BC Housing for this unit. The rent paid by the tenant is based upon her income.

The rental unit is a two bedroom unit. The rental unit is located in a family oriented complex. There are eighty two, three and four bedroom units. There is a long waiting list for all units.

The tenant moved into the unit with her minor daughter. In August of 2014 her now adult daughter moved to Calgary, after giving the landlord written notice of her intention to do so in a letter dated July 31, 2014.

On August 29, 2014 the landlord served the tenant with the 2 Month Notice to End Tenancy on the grounds that the tenant no long qualified for the subsidized rental unit.

The landlord explained that their policy is that single residents cannot live in a two bedroom unit and that residents who become single residents, “empty nesters”, are served with a 2 Month Notice to End Tenancy when their family status changes.

The building manager testified that in 2013 she started talking to the tenant about what would happen when her daughter moved out. She explained their policy and the fact that they did not have any one bedroom units in this complex so a transfer within the complex was not possible.

The tenant came with a neighbour and asked the landlord for a letter of reference. The landlord said the neighbour did not translate for the tenant but did provide support. The landlord provided the tenant with a very positive letter of reference dated December 3, 2013.

The tenant filed evidence that in May of 2014 her request to transfer to other housing was approved by BC Housing.

The tenant suffers from post-polio syndrome and other conditions which significantly limit her mobility. She is also being treated for depression.

The tenant testified that she did not read the notice to end tenancy because her English is not very good. She did not talk to anyone about the notice because she did not want to involve anyone in her situation. She knew that she had to do something but did not think she had to do anything right away.

On September 20 she met one of her neighbour's outside. She asked the neighbour to help her read the letter. The neighbour told her about a community agency that could help her. The neighbour made an appointment for her with a lawyer at the agency and took her to her appointment on Wednesday, September 24. On that date she met her legal advocate. The advocate prepared a thorough evidence package and filed this application for dispute resolution on behalf of the tenant on September 29.

The building manager testified that she has never had difficulty communicating in English with the tenant. The tenant's advocate stated that her experience was that sometimes the tenant appeared to understand when they spoke in English but later it would be apparent that the tenant had not really grasped the significance of the conversation. She also stated that the tenant did not understand English paperwork that well.

The advocate argued that once the tenant came to see her they filed this application as soon as possible and that there was no prejudice to anyone if the application went ahead.

Analysis

Section 49.1(5) of the *Residential Tenancy Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the tenant receives the notice. Subsection (6) states that is a tenant who has received a notice under this section does not make an application for dispute resolution within the time limit the tenant:

- is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice; and,
- must vacate the rental unit by that date.

Section 66(1) limits an arbitrators' power to extend a time limit established by the *Act* to "exceptional circumstances".

Residential Tenancy Policy Guideline 36: Extending a Time Period summarizes the law an arbitrator must apply on an application to extend or modify a time limit.

The policy lists some examples of what might not be considered "exceptional" circumstances:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.
- The party was not paying attention to the correct procedure.
- The party changed his or her mind about filing an application for arbitrator.
- The party relied on incorrect information from a family or friend.

An example of what could be considered an exceptional circumstance is that the party was in the hospital at all material times.

The *Guideline* sets out some criteria that may be considered by an arbitrator when determining whether there were exceptional circumstances:

- The party did not wilfully fail to comply with the relevant time limit.
- The party had a *bone fide* intent to comply with the relevant time limit.
- Reasonable and appropriate steps were taken to comply with the relevant time limit.
- The failure to meet the relevant time limit was not caused or contributed to by the conduct of the party.
- The party has filed an application which indicates there is merit to the claim.

- The party has brought the application as soon as practical under the circumstances.

The tenant had until September 15 to file this application for dispute resolution. Her evidence is that she did not talk to anyone about the notice to end tenancy or seek any advice or information until she spoke to her neighbour on September 20. The tenant's only explanation for the delay is that she did not understand that there was a time limit as to when she could take action.

The tenant knew her tenancy would be affected when her daughter moved out. That is why she obtained a letter of reference and had applied to B C Housing for a transfer months earlier. Accordingly, she had to know that the document served on her by the landlord was important.

The tenant had people who could and would help her once she asked.

- A neighbour had accompanied her when she met with the landlord and obtained a letter of reference in the winter of 2013.
- A neighbour arranged her appointment with the lawyer and took her to the appointment.
- A community agency provided the lawyer who filed this application; prepared and served all the supporting evidence; and represented the tenant at the hearing, including making a technical legal submission. The same agency also provided a translator for the tenant.
- Her daughter, although in Calgary, is clearly proficient in English and could have done a lot to explain the document or the seriousness of the situation to her mother on the telephone.

I accept the tenant's submission that she does not read or understand English paperwork very well. However, knowing this and knowing that her tenancy was in a state of flux, the tenant had a responsibility to take timely measures to have the legal documents translated and explained to her. Neither cost nor mobility issues were a barrier to seeking information. The tenant could have called the Residential Tenancy Branch by telephone and spoken to an information officer; she could have looked for a community agency to help her; or she could have spoken to a friend or neighbour. The evidence is clear that once she finally spoke to her neighbour, many people stepped forward to help her.

Having considered all of the evidence before me I cannot find that there are any "exceptional circumstances" here which would allow me to extend the time limit for filing this application for dispute resolution. The tenant's application is dismissed.

Conclusion

The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession. The landlord did not make an oral request for an order of possession at the hearing so no further order will be made.

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: December 01, 2014

Residential Tenancy Branch