Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

Introduction

The tenant applies to cancel three ten day Notices to End Tenancy for unpaid rent and for more time to do so.

The application also discloses a request to cancel a one month Notice to End Tenancy for repeated late payment of rent.

All four of the Notices are dated November 15, 2014 and were served on the tenant at the same time. The three ten day Notices each allege that rent of $750.00 was due for the respective months of June, July and August, 2014.

The tenant received the four Notices on November 15, 2014. She began to make her application to dispute the Notices on November 26th and it would appear that on that date she received a waiver of the fee requirement for her application. Her application was finalized on December 1, 2014, the date of the Notice of Hearing letter given to her for service upon the landlord.

Section 46 of the *Residential Tenancy Act* (the "*Act*") requires that a tenant wishing to challenge a ten day Notice, apply within five days after receipt of the Notice. The tenant has failed to do so here.

Section 66 of the *Act* sets out rules for the extension of time to make an application. As it relates to two aspects of this application, I quote it in full below:

> **Director's orders: changing time limits**
>
> 66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].

> (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:
>
> (a) the extension is agreed to by the landlord;
>
> (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
>
> (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Subsection (3) prohibits an extension of time to challenge an eviction Notice past the effective date of that Notice. In this case the effective date of all four Notices was December 16, 2014 and so I have the power under s. 66 to extend the time for the tenant to make the application before me.

However, the landlord raises a preliminary objection to the proceeding. He notes, and the tenant agrees, that the application was not served on the landlord (actually on his agent the respondent Mr. K.A.) until December 7, 2014 and not within the three day time limit the *Act* demands.

The provision of the *Act* that the landlord refers to is s. 59 (3), which provides:

> (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 59 (3) says that an applicant “must” serve the respondent with the origination documents within three days of making it. The *Interpretation Act*, RSBC 1996, c. 29; provides that in any enactment the word "must" is to be construed as imperative. That means “mandatory.”

Section 66 (1), set out above, which grants an arbitrator a general power to extend time limits, specifically denies an arbitrator the power to extend the three day limit in s. 59(3).

Despite the apparently conclusive definition of “must” in the *Interpretation Act*, courts have held that in some circumstances the use of the “must” in an enactment is “directory” only and its effect can be avoided where no prejudice has resulted from the breach of it.

In *Hyland Homes Ltd. v Thomas Pickering et al*, 2000 BCSC, 524, Madam Justice Downs reviewed the relevant law and held that despite the definition of “must” in the

Interpretation Act, the common law allowed a less strict interpretation of the word “must” where it was related to the performance of a public duty (in that case the duty of the statutorily constituted Dispute Resolution Committee to give notice) and where serious general inconvenience or injustice would result to persons who had no control over those entrusted with the duty.

In this case there is no “public duty” involved. The duty is one “entrusted” to a party to the proceeding; the applicant, and she had control over her own compliance with that duty. I find that I am not at liberty to interpret the word “must” otherwise that as a mandatory direction to the applicant.

In result, I find that due to the tenant’s failure to comply with the mandatory service provision in s. 59 (3), her application to cancel the eviction notices has not been properly constituted in accordance with the requirements of the Act and cannot proceed.

The tenant’s application is dismissed. As the effective dates of the four Notices, all December 16 2014 (though the one month Notice’s effective date would have been automatically changed to December 31, 2014 by s.53 of the *Act*) have passed, s. 66(3) now bars the tenant from obtaining another extension of time to apply. I therefore decline to grant the tenant leave to re-apply.

The landlord has requested an order of possession, as he is entitled to do under s. 55 of the *Act*. I grant the landlord an order of possession effective at one o’clock in the afternoon of January 15, 2015.

This decision was rendered orally after hearing and 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 02, 2015

Residential Tenancy Branch