



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cubbon Apts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC MNDC OLC RP

Introduction

This hearing convened pursuant to the tenants' application to cancel a notice to end tenancy for cause and for an extension of time to make their application to cancel the notice. The tenants also applied for an order for repairs, an order that the landlord comply with the Act and monetary compensation. The male tenant and two agents for the landlord participated in the teleconference hearing.

Preliminary Issues

At the outset of the hearing the tenant requested an adjournment on the basis that he had recently retained legal counsel, but his counsel was not available to appear in the hearing on this date. I informed the parties that I was not prepared to adjourn the hearing in its entirety, and that we would proceed with the issue of the notice to end tenancy. When a party requests an adjournment I must consider whether the amendment would prejudice the other party, or result in a breach of the principles of natural justice. In the case of a notice to end tenancy, an adjournment in this case would unfairly prejudice the landlord. The tenant's failure to retain available counsel in a timely manner is not the fault of the landlord.

I determined that the issues of the notice to end tenancy and the extension of time to apply to dispute the notice took precedence, and only heard evidence on those issues. I will address the remainder of the tenants' application in the conclusion of my decision.

Issue(s) to be Decided

When were the tenants served or deemed served with the notice to end tenancy?
Are the tenants entitled to an extension of time to make their application to cancel the notice to end tenancy?
Is the landlord entitled to an order of possession? If so, when will the order be effective?

Background and Evidence

The landlord provided evidence that on December 15, 2014 they served the tenants with a notice to end tenancy for cause by attaching the notice to the rental unit door in the presence of a witness. The landlord also submitted as evidence an email that the landlord sent to the female tenant on December 17, 2014, in which the landlord wrote, in part, “the decision to give you and [the male tenant] the ‘1 Month Eviction Notice’ was a direct result of both your behaviours.” In the hearing the landlord stated that if the tenants did not know what the landlord was talking about in the email, they should have contacted the landlord. However, they did not.

In the hearing the landlord orally requested an order of possession.

The male tenant stated that his wife found the notice to end tenancy in a common room in their building on January 1, 2015. The tenant stated that on January 13, 2015 his wife attended at the Residential Tenancy Branch office to submit their application to cancel the notice, but at that time she was informed that she did not have all of the necessary papers. The male tenant stated that he then went back to the Branch office on January 15, 2015 to complete the application. The tenant stated that the reason for the delay in applying to cancel the notice was that his wife has been very unwell and he was caring for her for a month and a half. The tenant stated that he could obtain a doctor’s note to prove this.

Analysis

Service of Notice to End Tenancy

I accept the landlord’s evidence that they attached the notice to end tenancy to the rental unit door on December 15, 2014. Attaching a notice to end tenancy in this way is an acceptable method of service under the Act. The Act also sets out that when a document is served in this way, it is deemed to have been received three days after it was attached to the door. However, deemed service is a rebuttable presumption. I accept the tenant’s evidence as credible that he did not receive the notice to end tenancy until January 1, 2015. I do not find that the landlord’s email dated December 17, 2014 proves that the tenants were served with the notice by that date. The tenants were under no obligation to enquire about the landlord’s reference to an “eviction notice.” I find that the tenants were in receipt of and aware of the notice to end tenancy on January 1, 2015.

Extension of Time to Apply

When a tenant is served with a notice to end tenancy for cause, if they wish to dispute the notice they must make an application within 10 days of receiving the notice. If the application is filed late, the tenant may apply for an extension of time. The Act sets out that an extension of time may only be granted in exceptional circumstances.

In this case, I found that the tenants were in receipt of the notice on January 1, 2015. The tenants therefore were required to make their application by January 11, 2015. As that date fell on a Sunday, the last day for the tenants to apply became January 12, 2015. The tenants began the process of applying on January 13, 2015, when the female tenant attended the Branch office. Their application was not completed until January 15, 2015.

I find that the tenants did not provide sufficient evidence to establish that extraordinary circumstances prevented them from applying by January 11, 2015 to dispute the notice. The male tenant stated that he had been caring for his wife for one and a half months, and I find that the female tenant's physical condition was not unexpected. Further, the female tenant was well enough to attend at the Branch to initiate the application. The tenants knew when they made their application that they would be required to provide evidence to support their application, including their application for an extension of time; however, they did not submit the doctor's note that the male tenant stated he could obtain. I therefore dismiss the tenants' application for an extension of time and their application to cancel the notice to end tenancy for cause.

Order of Possession

In the hearing the landlord orally requested an order of possession. When a tenant's application to cancel a notice to end tenancy is dismissed, and the landlord orally requests an order of possession in the hearing, I must grant the order of possession. Accordingly, I grant the landlord an order of possession.

As I have found that the tenants were in receipt of the notice to end tenancy on January 1, 2015, the effective date of the notice to end tenancy is automatically corrected to February 28, 2015.

Conclusion

I grant the landlord an order of possession effective February 28, 2015. The tenants must be served with the order of possession. Should the tenants 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.

Because the tenancy is ending, I dismiss the tenants' application for orders for repairs and the landlord's compliance with the Act.

The tenants' monetary claim is dismissed with leave to reapply.

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: February 4, 2015

Residential Tenancy Branch

