



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sussex Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC
Tenant: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and the tenant seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

It must also be decided are if the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Act*.

Background and Evidence

The parties agree the tenancy began on June 1, 2002 as a month to month tenancy for the monthly rent of \$572.00 due on the 1st of each month with a security deposit of \$200.00 paid.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on March 9, 2015 with an effective vacancy date of April 30, 2015 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The parties agreed the tenant received the landlord's 1 Month Notice to End Tenancy for Cause on March 9, 2015. The tenant testified that he was unable to file his Application for Dispute Resolution until March 23, 2015 because he had been told by a person that had been through arbitration before that he had "about a couple of weeks" to file his Application to dispute the notice.

The tenant further testified that he did not know, until he went in to Service BC to submit his Application, that he needed to get information from his income assistance worker in order to submit his Application for Dispute Resolution and so he took him some additional time to obtain this information.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the evidence and testimony of both parties I find the landlord issued and the tenant received a 1 Month Notice to End Tenancy for Cause on March 9, 2015.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time it was required is very strong and compelling.

While the tenant explained that he did not know that he had to submit his Application within 10 days to dispute the 1 Month Notice I note that the 1 Month Notice itself provides the information on the Notice that specifically tells the tenant how long they have to dispute the Notice.

I find the fact that the tenant relied on information from someone who had been involved in arbitration in the past despite having the information presented to him in the 1 Month Notice does not warrant exceptional circumstances that would allow an extension of the deadline.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

As the tenant failed to submit his Application for Dispute Resolution within 10 Days and has not identified any exceptional circumstances sufficient to be granted additional time to submit his Application I find the tenant has failed to comply with Section 47(4) and pursuant to section 47(5) is conclusively presumed to have accepted the end of the tenancy.

Based on the above, I dismiss the tenant’s Application for Dispute Resolution in its entirety.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: May 05, 2015

Residential Tenancy Branch

