



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on April 30, 2015 to allow the Tenant more time to make his application to cancel a Notice to end tenancy; and if more time is granted the Tenant applied to cancel a 2 Month Notice to end tenancy issued for landlord's use of the property.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, the Tenant's adult daughter, and the Tenant's witness. The Landlord and Tenant provided affirmed testimony. The Landlord confirmed receipt of the Tenant's application and notice of hearing documents and stated that the Tenant did not serve her with a copy of the 2 Month Notice in his evidence.

The hearing was scheduled to begin at 10:30 a.m. at which time the Landlord and the Tenant's witness R.L. were present. As the Tenant was not present at the beginning of the hearing I requested the witness provide me with his telephone number so that he could disconnect from the hearing until such time that he was called back to give testimony. I advised the witness that if I did not call him back within the hour then I would not be hearing his testimony. He stated that he understood and disconnected from the hearing.

The Tenant signed into the hearing 8 minutes late, at 10:38 a.m. I advised the Tenant that his witness had been in attendance and that I had his telephone number to call him if he was needed to provide evidence. The Tenant's daughter identified herself and stated that she has been residing at the rental unit with her father.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to be granted more time to file his application to dispute a Notice to end tenancy?
2. If not, did the Landlord appear and request an Order of Possession?

Background and Evidence

The Landlord testified that she personally served the Tenant with the two pages of the 2 Month Notice to end tenancy for landlord's use on February 1, 2015. She stated that her copy of the 2 Month Notice was signed and that it listed an effective date of March 2015. The Landlord stated that page two of the Notice indicated that the Notice was being issued for the reason that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenant argued that he was not served the 2 Month Notice until February 5, 2015 and that his daughter and another female could testify to that date. He confirmed that the 2 Month Notice he was personally served was two pages in length and that the second page had the same reason marked off as the Landlord described which was the landlord intends to move in.

The Tenant testified that he filed his application on April 30, 2015 because he could not take it anymore. He went on to explain that at the end of March 2015 the Landlord had threatened that she was going to throw out his things so he called the residential tenancy board and the advocacy board for assistance and they told him what to do.

When asked why he did not seek assistance sooner or why he did not file his application sooner the Tenant stated that he did not know the rules about the law so he waited longer. The Tenant confirmed a second time that he received both pages of the 2 Month Notice with the explanations on what to do about the Notice and then he stated that he was "ignorant" as he did not know what to do.

The Tenant reiterated that he contacted the advocacy board and the tenancy board only after he became concerned that the Landlord was going to throw out his possessions. He argued that he did not call anyone for help sooner because it was not like he had to do this stuff all the time.

In response to the Tenant's submissions the Landlord stated that she appeared at the hearing to make an oral request for an Order of Possession.

I explained to both parties that I would be making a determination on whether I would be granting more time for the Tenant to make his application. If the request was denied then the Tenant's application would be dismissed and the Landlord would be granted an Order of Possession. Both parties stated that they understood the process. The Tenant requested that his copy of the Decision be mailed to him and the Landlord requested her copy to be faxed to Service BC for her to pick up.

Analysis

Section 53 (1) of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case, regardless of the 2 Month Notice to end tenancy being served on either February 1, 2015 or February 5, 2015, the effective date of the Notice automatically corrects to **April 30, 2015**, pursuant to section 53 of the Act. If the Landlord was seeking an effective date of March 31, 2015 then the 2 Month Notice would be required to be served upon the Tenant no later than January 31, 2015.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in **exceptional circumstance**. The extension cannot be granted for a date after the effective date of the Notice. [My emphasis added by bolding].

Residential Tenancy Policy Guideline 36 provides that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time that is required would be very strong and compelling. Common law has noted that a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The 2 Month Notice to end tenancy includes important information for tenants as follows:

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.

[Reproduced as written on page 1 of the 2 Month Notice]

You have the right to dispute this Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application for Dispute Resolution within 15 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (You can move out sooner). If you

do not file the Application or move out, your landlord can apply for an Order of Possession that is enforceable through the court.

[Reproduced as written on page 2 of the 2 Month Notice]

After consideration of the forgoing, I find the reasons given by the Tenant why he did not apply to dispute the 2 Month Notice within the prescribed timeframes do not constitute exceptional circumstances. I make this finding in part because the Tenant, his adult daughter and another female were all aware that the Notice had been personally served upon the Tenant and the Tenant confirmed receipt of both pages of the Notice which clearly outline that the Tenant had 15 days to dispute the Notice. Therefore, his submission that he was not aware of the law or that he was “ignorant” of the process constitutes an excuse and not an exceptional circumstance. Accordingly, I dismiss the Tenant’s application without leave to reapply, as it was not filed within the required timeframes.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant’s request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord appeared at this hearing and made an oral request for an Order of Possession. Accordingly I award the Landlord an Order of Possession.

Conclusion

The Tenant was not successfully in his request for more time to file his application. The Tenant’s application was dismissed, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the BC Supreme Court 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: June 12, 2015

Residential Tenancy Branch

