



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC OPC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for cause as well as for an extension of time to apply. The landlord applied for an order of possession pursuant to the notice to end tenancy for cause. The tenant, a witness for the tenant and an agent for the landlord participated in the teleconference hearing.

Preliminary Issue – Extension of Time

The tenant applied for an extension of time to cancel a notice to end tenancy for cause. On March 15, 2015 the landlord served the tenant with the notice to end tenancy by posting the notice to the rental unit door. The tenant stated that she received the notice on March 18, 2015. A tenant who receives a notice to end tenancy for cause and seeks to dispute the notice must make an application to cancel the notice within 10 days of having been served with the notice. In this case the tenant did not apply to cancel the notice until April 29, 2015.

The notice to end tenancy indicates that the reason for ending the tenancy is that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In her application the tenant wrote that the landlord gave her an eviction notice because she swore at him.

Tenant's Submissions

The tenant stated that the reason she did not apply to cancel the notice until April 29, 2015 was that she was served with the notice for swearing at the landlord, and she called three times and left messages for the landlord, apologizing for swearing. The tenant and her witness, her son, stated that the landlord called the tenant, the tenant put

the phone on speaker phone so her son could hear, and the landlord told the tenant that there was no more eviction notice.

I note that in the hearing the tenant stated that she had to hand the phone to her son, because she did not have a speaker phone. I asked the tenant and her son what phone they used when the landlord called. The tenant's son did not answer my question, though he may have misunderstood me, as he began testifying about his reaction to the landlord cancelling the notice. The tenant's response was that she bought a new phone.

Landlord's Response

The landlord's response was that he did not withdraw the notice to end tenancy. The landlord stated that he called the tenant and told her that he didn't care about the swearing. The landlord stated that the main reason for the notice was that the tenant was unreasonably disturbing other occupants.

Analysis

I found the testimony of the landlord to be more credible and consistent than that of the tenant. It may be that the tenant misunderstood the reasons that the landlord issued the notice, and mistakenly believed that the landlord was withdrawing the notice because he didn't care about the swearing.

Under section 66(1) of the Residential Tenancy Act, an extension of time can only be granted where the applicant has established that there are exceptional circumstances. I find that the tenant has failed to prove that exceptional circumstances prevented him/her from applying to cancel the notice. The tenant's possible misunderstanding does not amount to extraordinary circumstances. I therefore dismiss the tenant's application.

The landlord applied for and is entitled to an order of possession. The tenant paid rent for June 2015, so the effective date of the order of possession will be June 30, 2015.

As the landlord's application was successful, he is entitled to recovery of the \$50.00 filing fee for the cost of his application.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective June 30, 2015. The tenant must be served with the order of possession. Should the tenant 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.

I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims 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 11, 2015

Residential Tenancy Branch

