



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNE, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for end of employment and for cause. The tenant also applied for more time to make application to dispute the notice and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord stated that he served the tenant with his evidence by placing packages inside the tenant's locked mail box on August 17 and 18, 2015, in the presence of a witness. The tenant stated that he did not open his mailbox and therefore had not received the evidence. As the tenant cannot evade service by neglecting to pick up mail, I find the tenant was duly served with the landlord's evidence package.

Issues to be decided

Was there a compelling reason that prevented the tenant from making an application to dispute the notice to end tenancy within the legislated time frame? Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The tenancy started in September 2010. The monthly rent was \$450.00 at that time. The rental unit consists of a three bedroom suite that is located in one of two buildings that house a total of 8 rental units.

In March 2012, the parties entered into an agreement which allowed the tenant to live rent free while managing the rental units. The tenant was also allowed to sublet a portion of his suite.

The landlord stated that in May 2015, he started receiving complaints from the other occupants regarding disturbances caused by the tenant and his short term renters. They informed the landlord that the tenant was renting to “undesirable females” and that there were drug related activities going on that involved the police. The tenant was also involved in a violent incident with one of his renters.

On May 15, 2015, the landlord served the tenant with a notice to end tenancy for cause and for end of employment. The notice was served in person in the presence of a witness. The tenant is deemed to have received the notice on May 15, 2015. The reasons for the notice were that the tenant and persons permitted on the property by the tenant have put the landlord’s property at significant risk and that the tenant’s rental unit as part of an employment arrangement has ended.

The tenant applied to dispute the notice on June 25, 2015, which is 41 days after having received the notice. The tenant stated that he has ongoing health problems that prevented him from making this application in a timely manner.

The tenant stated that he had just returned from being hospitalized when he received the notice and that the reason he did not make application to dispute the notice in a timely manner is because he is bi-polar and had to return to the hospital on or about May 25, 2015 (10 days after receipt of the notice), to treat a back injury.

The landlord testified that upon getting word from the other occupants of the rental property that the tenant was observed loading a moving truck and had not been seen or heard from, he visited the unit on July 30, 2015 and posted a 24 hour notice to enter the unit. On July 31, 2015, the landlord entered the unit and found that most of the tenant’s belongings were gone and that it appeared that the tenant had moved out. The landlord stated that the refrigerator was empty and there was no sign of any food, furniture or personal belongings inside the unit.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for cause and end of employment on May 15, 2015 and did not make an application to dispute it within the legislated time frame of ten days.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling.

On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented him from filing for dispute resolution within the legislated time limit. The tenant's bi-polar disorder is ongoing and the tenant returned to the hospital approximately ten days after having received the notice to end tenancy. Accordingly I am unable to grant the tenant an extension of time to make this application. The notice to end tenancy is upheld.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective two days after service on the tenant. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

Since the tenant has not proven his case, he must bear the cost of filing his application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

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: August 26, 2015

Residential Tenancy Branch

