



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, AS

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for cause and the tenant applied for an order to set aside this notice and for more time to do so. The tenant also applied for an order directing the landlord to allow him to sublet.

Both parties attended the hearing and had opportunity to be heard. The landlord did not file any evidence and acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to dispute the notice to end tenancy?

Background and Evidence

The tenancy began on July 01, 2015. On November 28, 2015, the landlord served the tenant in person, with a one month notice to end tenancy for cause. The notice was in the approved format of two pages.

The tenant agreed that he was aware of the 10 day legislated time frame to make an application to dispute a notice to end tenancy for cause. The tenant also agreed that he had made application on December 18, 2015 which is 20 days after having received the notice to end tenancy.

The tenant stated that he suffers from epilepsy and is taken care of full time by his wife. He also stated that due to no fault of his, utilities were cut off and that the Residential Tenancy Branch Office was a 30 mile drive away from his home.

The tenant testified that for all the above reasons he was unable to make an application to dispute the notice to end tenancy within the legislated time frame.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy on November 28, 2015. The tenant did not apply to dispute the notice until December 18, 2015, a full 20 days after receiving the notice. Based on the above, I find the tenant failed to file his application to dispute the notice, in a timely manner.

Section 47(4) of the Act provides that tenants have 10 days in which to dispute a one month notice to end tenancy for cause, failing which they are conclusively presumed to have accepted the end of the tenancy.

The tenant has applied for more time to apply to dispute the notice. I am unable to grant the tenant more time to make his application without proof that exceptional circumstances prevented him from complying with the statutorily prescribed timeframe.

Section 66(1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3).

Policy guideline 36 for the *Act* explains 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 by the required time must be very strong and compelling. Furthermore, a "reason" without any force of persuasion is merely an excuse. Therefore, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The tenant testified that the reason for the delay was that he suffered from epilepsy, had no utilities at the time of receipt of the notice and lived 30 miles away from the nearest Residential Tenancy Branch Office.

Based on the testimony of the tenant, I find that the tenant has insufficient evidence of a strong or compelling reason, or of exceptional circumstances, which would allow me to extend a time limit established by the *Act*. Therefore, I dismiss the request for an extension of time to apply to dispute the notice.

The tenant's claim to set aside the notice is dismissed. The notice is upheld and the tenancy will end in accordance with the notice.

I find that the landlord is entitled to an 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 tenancy is ending, the tenant's application to be allowed to sublet is moot and accordingly dismissed.

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. The tenant's application is dismissed in its entirety.

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 05, 2016

Residential Tenancy Branch

