



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1057151 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by one of the tenants.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on February 18, 2016 in accordance with Section 89.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to more time to dispute a notice to end tenancy; to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 66, 67, and 72 of the *Act*.

Should the tenants be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant testified the tenancy began in 2010 as a month to month tenancy for a current monthly rent of \$877.00 due on the 1st of each month.

The tenant submitted in to evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on January 29, 2016 with an effective vacancy date of February 29, 2016 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 tenant stated that they received the notice on January 29, 2016 and that they corrected the breach within a few days and spoke with the landlords agent who indicated that as a result the landlord would cancel the 1 Month Notice. Days later (after the 10 days allowed for the tenants to dispute the Notice) the landlord's agent came back to the tenants and told them that the landlord still wanted to enforce the Notice. The tenants then submitted their Application for Dispute Resolution on February 16, 2016.

Analysis

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 required is very strong and compelling.

Based on the tenant's undisputed testimony I accept that the landlord's agent provided conflicting information to the tenants and as such gave the tenants the false impression that they would not need to dispute the Notice until after the deadline to do so. I find these to be exceptional circumstances and allow the tenants more time to apply.

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.

In the absence of the landlord or any evidence from them, I find the landlord has failed to establish that the tenants were in breach of any terms of the tenancy agreement let alone any material term. As such, I find the landlord has failed to establish any cause to end the tenancy.

Conclusion

Based on the above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on January 29, 2016 and order that the tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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: April 05, 2016

Residential Tenancy Branch