



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application made September 12, 2016: MT; CNC
Landlord's Application made October 6, 2016: OPC; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenant seeks an extension of time to make an application to cancel a notice to end tenancy; and to cancel a Notice to End Tenancy for Cause issued August 22, 2016 (the "Notice").

The Landlord seeks an order of possession based on the Notice; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and provided affirmed testimony.

I explained to the parties that I would consider the Tenant's application for an extension prior to hearing evidence with respect to whether or not the Notice should be cancelled.

Preliminary Matter

The Tenant has applied for an extension of time to dispute the Notice. He stated that he received the Notice on August 26, 2016, and that he was prevented from making his Application until September 12, 2016, due to illness. The Tenant testified that he was hospitalized for three days between August 26 and September 12, 2016, but could not recall the specific days.

The Tenant did not provide documentary evidence in support of his testimony. He testified that he could not find his hospitalization documents and that he had made enquiries about receiving copies from the hospital, but had not yet received them. The Tenant testified that he is under the care of a family physician, but did not provide a letter from his doctor confirming his hospitalization. The Tenant submitted that the

nature of his illness prevented him, or an agent, from making an application before September 12, 2016.

Analysis

Section 47(4) and (5) of the Act provides:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[reproduced as written]

In this case, the time limit for making his application was September 7, 2016.

Section 66(1) of the Act provides:

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

[reproduced as written]

Residential Tenancy Branch Policy Guideline 36 provides the following guideline with respect to “Exceptional circumstances”:

Exceptional Circumstances

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 required is very strong and compelling. Furthermore, as one Court noted, 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

[reproduced as written]

Based on the Tenant's testimony, and the lack of supporting documentary evidence, I find that he has not provided sufficient evidence that there were exceptional circumstances that prevented him from making his application within the 10 day time limit set under Section 47 of the Act. I find that the Tenant did not provide sufficient evidence that:

- The Tenant was hospitalized and/or otherwise incapacitated from August 27 to September 12, 2016; and
- The Tenant could not instruct an agent to make the application on his behalf before September 7, 2016.

Therefore, the Tenant's application for an extension of time is dismissed.

Further to the provisions of Section 47(5) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2016. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession.

Section 55 of the Act provides that a landlord is entitled to an order of possession if a tenant's application to cancel a notice to end tenancy is unsuccessful. Therefore, I decline to award the Landlord recovery of the filing fee.

Conclusion

The Landlord is hereby provided with an Order of Possession effective 2 days after service of the Order upon the Tenant. This Order may be filed in the Supreme Court of British Columbia 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: October 27, 2016

Residential Tenancy Branch