Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT, OLC, FF

Introduction

The tenant applied for an order for more time to make this application, and if granted, an order to cancel a one month Notice to End Tenancy dated August 31, 2016. Both parties were present at the hearing.

Issue(s) to be decided

Should the tenant be allowed more time to make her application?
If so, is the Notice valid to end the tenancy vallid?

Background and Evidence

This tenancy began April 1, 2016. Monthly rent is $1,150.00. On August 31, 2016, a One Month Notice to End Tenancy was given to the tenant in person. The tenant advised at the hearing that she is moving out at the end of November but is disputing the Notice as she believes the landlord ought to have issued a Two Month Notice requiring the landlord to pay the tenant compensation for moving out.

On August 17, 2016 the landlord received a letter from the City of Delta advising her that the unit was not to code, required repairs, and was to be vacated by 30 days or the landlord could be fined $ 500.00 per day.

The Notice relies upon section 47 (1) (k) which states:

> (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

The tenant disputed the Notice on September 27, 2016 almost 30 days after receiving the Notice. The tenant asks for more time to dispute the Notice as she claims she was in discussions with the city to extend the time she was required to vacate because of a government Order. The tenant testified that the City of Delta advised her it would not be necessary to dispute the Notice if the landlord and City agreed to any extension of time. The tenant submitted that as soon as she learned there would not be any extensions she disputed the Notice.

The landlord testified that she always insisted the tenant vacate to comply with the City's demand. The landlord requested an Order for Possession effective on November 30, 2016.

Analysis

Section 47 of the Residential Tenancy Act deals with the issues related to landlords' notices given to end the tenancy for cause (as is the case in this dispute). Subsection 47(4) provides that the time limit to dispute such notice is within 10 days after the date the tenant receives the notice. In this case the notice was served August 31, 2016.. A dispute of the notice should have been filed by September 11, 2016. In fact the dispute was filed September 27, 2016.

Section 47(5) provides that when a tenant does not dispute a notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date.

Section 66 of the *Residential Tenancy Act* provides that I have the authority to extend or modify a time limit only in exceptional circumstances. I note that in this case the application is made prior to the effective ending of the tenancy. Given that the tenant received the notice August 31, 2016, the effective end of tenancy is correctly September 30, 2016 as the rent was paid to date.

Policy guideline 36 provides guidance over the process of time extensions, and states the following:

> 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.

There are two key factors that I look to, in determining that exceptional circumstances do not exist in this case. Firstly, the tenant received the Notice on August 31, 2016. Secondly, she did not file an application because she was in discussions with the City and landlord to determine if she could obtain an extension. Essentially, the tenant initially decided to negotiate her ability to remain in the unit rather than filing of a dispute of the notice ending her tenancy.

In keeping with the policy guideline referred to above, these factors militate against a finding that exceptional circumstances exist, warranting no extension of the 10 day time limit. It would have more prudent for the tenant to dispute the Notice and then contact the city and or the landlord in any attempt to negotiate staying in the unit.

Accordingly, I dismiss the claim for an extension of time to make this application, and consequently dismiss the balance of the tenant’s claims. I need not address the merits of the reasons for giving the notice, ending the tenancy. Section 47(5) of the Residential Tenancy Act applies, and the tenant is conclusively presumed to have accepted that the tenancy has ended September 30, 2016, (as extended to November 30, 2106, by virtue of the use and occupation period).

Conclusion

The tenant's applications are dismissed. The tenancy ends November 30, 2016. I have issued the landlord an Order for Possession effective that date which can be enforced in the Supreme Court of BC. The landlord must serve the tenant with the Order. The tenant will not recover her filing fee.

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: November 21, 2016

Residential Tenancy Branch