



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, OLC

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy, and an order that the Landlord comply with the Act, regulation or tenancy agreement.

Both parties signed into the teleconference and gave affirmed testimony.

The Tenant made her Application for Dispute Resolution on October 17, 2016. On October 20, 2016, the Tenant filed an amendment to her Application, but did not provide any details with respect to what she was seeking to amend. The Tenant provided the Landlord with the Notice of Hearing package on October 21, 2016.

Preliminary Matter

The Landlord served the Tenant with a Notice to End Tenancy for Cause on September 29, 2016 (the "Notice"). This is the Notice that the Tenant is seeking to cancel.

Section 47(4) of the Act provides that a tenant may apply to cancel a notice to end tenancy for cause by making an Application within 10 days of receipt of the Notice. This information is also provided on page two of the Notice. The Tenant acknowledged receipt of the Notice on September 29, 2016, and therefore had until October 9, 2016, to make her Application to cancel the Notice.

The Tenant stated that the amendment filed on October 20, 2016, was for an extension of time to make her Application. She stated that she didn't apply to cancel the Notice within the 10 days allowed because she was confused and didn't know what to do.

Section 66 of the Act provides that an extension of time may be granted only in exceptional circumstances.

Residential Tenancy Policy Guideline 36 provides the following guidance:

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

[reproduced as written]

In this case, I find that the Tenant did not provide sufficient evidence of exceptional circumstances that precluded her from making her Application within the legislated time allowed.

Section 47(5) of the Act provides:

(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]

Pursuant to the provisions of Section 47(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on October 31, 2016. Therefore, I dismiss the Tenant's Application to cancel the Notice.

Further to the provisions of Section 55 of the Act, the Landlord is entitled to an Order of Possession. The Landlord stated that the Tenant has paid for use and occupancy of the rental unit until December 31, 2016, and therefore she is seeking the Order of Possession to be effective December 31, 2016.

Conclusion

The Tenant's Application is **dismissed**.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., December 31, 2016**. 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: December 13, 2016

Residential Tenancy Branch