



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenant to cancel a Notice to End Tenancy, for more time to make the application and to recover the filing fee.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on December 19, 2017 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's application and hearing package.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to more time to make the application?
2. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2008 as a 12-month fixed term tenancy and then the tenancy continued on a month to month basis. Rent is \$750.00 per month payable on the 1st of the month. A security deposit of \$312.50 was paid at the start of the tenancy.

At the start of the conference call the Tenant's brother W.H. said the Tenant did not understand the 1 Month Notice to End Tenancy for Cause and he did not read it fully, so he did not know he had to file a dispute within 10 days of receiving the Notice. The Tenant's brother said the Tenant has health issues that impair his understanding of things, so he helped the Tenant with the Notice, but it was past the time to file a dispute on time. The Tenant said he received the 1 Month Notice to End tenancy for Cause on November 21, 2017 but he did not get his brother to help him until 11 days later. This is

why the Tenant is requesting more time to make his application. The Tenant's application was filed on December 19, 2017.

The Landlord said he has given the Tenant 3 other 10 Day Notice to End Tenancy for Unpaid Rent in the months of March, October and December 2017 and the Tenant was late paying the rent in November 2017 as well. The Landlord continued to say that because of these other different Notice to End Tenancy the Landlord explained the seriousness of the 1 Month Notice to End Tenancy for Cause to the Tenant. The Landlord said the Tenant understood what the 1 Month Notice to End Tenancy was. The Landlord continued to say the reason on the 1 Month Notice to End Tenancy for Cause is for repeatedly late rent payments which he has proven with the previous 10 Day Notices to End Tenancy for Unpaid Rent issued to the Tenant.

Page two of the 1 Month Notice to End Tenancy for Cause says in the paragraph titled "information for tenants" that when a tenant receives this Notice to End Tenancy the Tenant may dispute the Notice by making an application. Further it says the application must be made within 10 Days of receiving the Notice to End Tenancy. In this case the Tenant said he received the Notice to End Tenancy on November 21, 2017 therefore the Tenant should have made the application by December 1, 2017. The Tenant application is dated December 19, 2017.

Further page two of the Notice says a tenant may apply for more time to make an application if there is a serious and compelling reason for not applying within the 10 days of receiving the Notice to End Tenancy. The Tenant said he did not read the Notice to End Tenancy fully and so he did not understand he had to make an application to dispute the Notice.

Not reading a Notice to End Tenancy is not a serious or compelling reason to delay and application to dispute the Notice. Further the Landlord testified that he explained the seriousness of the 1 Month Notice to End Tenancy for Cause to the Tenant and the Tenant understood. Consequently, I find that the Tenant has not established grounds to prove that he has a serious and compelling reason for more time to file his application. Not reading the Notice to End a Tenancy is not a defense to be granted more time to make an application. The Tenant request for more time to make his application to dispute the Notice to End Tenancy is dismissed without leave to reapply.

Consequently, the Tenant is not successful in disputing the 1 Month Notice to End Tenancy for Cause dated November 21, 2017 due to late filing of the Tenant's application therefore, I dismiss the Tenant's application. Pursuant to section 55 of the Act the Landlord is entitled to an Order of Possession if a Tenant's application to Dispute a Notice to End Tenancy is unsuccessful. I award the Landlord an Order of Possession with an effective vacancy date of February 28, 2018. Further the Tenant agreed to pay the February 2018 rent of \$750.00 for the Landlord extending the effective vacancy date from January 31, 2018 to February 28, 2018.

Conclusion

An Order of Possession effective at 1:00 p.m. on February 28, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: January 30 2018

Residential Tenancy Branch