Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel an unsigned, undated, one month Notice to End Tenancy served for cause on the tenant August 17, 2015.

The landlord argues that he was not served within the three day period imposed by s. 59(3) of the *Residential Tenancy Act* (the "*Act*"). He verbally requests an order of possession, as he is entitled to do under s. 55 of the *Act*.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has failed to comply with s. 59(3)? If so, what is the consequence? If the tenant's application fails, is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is unit in a three unit townhouse. The tenancy started in June 2014. The current rent, as of September 2015, is $666.00, due on the first of each month, in advance. The landlord holds a $325.00 security deposit.

The tenant's application was submitted on August 25, 2015. That is also when the fee (reduced to $0.00) was noted to have been paid. The actual application and hearing documents were issued on August 27, 2015. That is the date of the notice of hearing letter provided to the tenant by the Residential Tenancy Branch.

The tenant's application did not apparently include necessary information (such as a checked off box in the standard form application indicating what relief the tenant was seeking). On September 10th the tenant filed another application, this time with the appropriate box checked off to indicate that she wished to cancel a one month Notice to End Tenancy for cause. No additional fee was paid nor waived.

The application and notice of hearing documents were sent to the landlord by registered mail on September 10th. He retrieved them on September 21st.

Mr. B.P., the tenant's son and advocate explains the delay between the issuing of the documents August 27th and the filing of the fully completed application on September 10th as having been caused by the fact that his mother the tenant was in hospital and her rental unit locked. He says that the documents were not available to be retrieved and served.

The landlord points out that he could have let Mr. B.P. into the apartment with his master key.

Analysis

I find that s. 59(3) is determinative of the tenant's claim. That section provides:

> Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Rule 2.6 of the Rules of Procedure that were in effect at the time this application was brought, indicate when an application is "made."

Point at which an application is considered to have been made

The application for dispute resolution has been filed when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or at a Service BC office.

In this case that date was August 25, 2015. The tenant has not complied with s. 59(3) of the *Act*.

Section 59(3), stating that an applicant must serve the respondent within three days, is a statutory provision that is to be construed as imperative according the *Interpretation Act*, RSBC 1996, c. 238.

In many circumstances, an arbitrator may extend time limits established by the *Act*. That power is given by s. 66(1). However, s. 66(1) specifically excludes an arbitrator from extending the three day service time limit imposed by s. 59(3).

In result the tenant has failed to comply with a mandatory statutory requirement by serving the landlord with the application within three days after it had been made and an arbitrator has no power to extend that time.

It follows that the tenant's application to cancel the one month Notice must be dismissed as not having complied with the mandatory provisions of the *Act.*

Regarding the landlord's request for an order of possession, s. 55(1) of the *Act* states:

> If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
>
> (a) the landlord makes an oral request for an order of possession, and
>
> (b) the director dismisses the tenant's application or upholds the landlord's notice.

The tenant's application is dismissed, however, the Notice in question was not dated or signed by the landlord. Section 52(a) of the *Act* requires that to be effective, a Notice be signed and dated by the landlord or tenant giving the notice. This Notice was not, on its face, effective to end the tenancy and so an order of possession cannot be granted to the landlord under s. 55(1), above.

Conclusion

The tenant's application is dismissed. The landlord's request for an order of possession is refused.

This decision is rendered orally at hearing and 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 30, 2015

Residential Tenancy Branch