



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made September 12, 2016: CNC

Landlord's Application made September 30, 2016: OPC; MND; MNSD; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenant seeks to cancel a notice to end tenancy; and to cancel a Notice to End Tenancy for Cause issued August 30, 2016 (the "Notice").

The Landlord seeks an order of possession based on the Notice; a monetary award for damages; to set off the security deposit against her monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and provided affirmed testimony.

It was established that the Landlord served the Tenant with her Notice of Hearing documents and copies of her documentary evidence by hand on or about September 30, 2016. An additional package of documentary evidence was served by hand on October 11, 2016.

The Tenant served the Landlord with her Notice of Hearing documents, by hand, on or about September 12, 2016. The Tenant testified that she did not serve the Landlord with copies of her documentary evidence because she was unaware that she was required to do so. Therefore, I have not considered the Tenant's documentary evidence as it was not served upon the Landlord. I invited the Tenant to provide me with oral testimony with respect to those documents.

Preliminary Matter

The Tenant stated that she was served with the Notice on August 30, 2016. Section 47 of the Act required the Tenant to make her application to cancel the Notice by September 9, 2016.

She stated that she is a single mom with 2 jobs, working 7 days a week, and therefore was not able to make her Application to cancel the Notice before on or before September 9, 2016. She testified that she attended in person at the Burnaby Residential Tenancy office on September 9, 2016, and was told by an Information Officer that she could come back on September 12, 2016, to make her application. The Tenant stated that she was unaware of her rights, or the requirement that she file her application within 10 days.

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]

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, I find that she has not provided sufficient evidence that there were exceptional circumstances that prevented her from making her 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 there were circumstances that prevented her from contacting another person to make the application on her behalf.

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. The Landlord asked for an order of possession to be effective on October 31, 2016.

The Landlord stated that there would be additional utility costs which they would like to claim against the Tenant, and which they had not yet received bills for. I allowed the Landlord to withdraw her claim for a monetary order. She may reapply if she so desires.

The Landlord's Application for an order of possession was not required and therefore, I decline to award the Landlord recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed.

The Landlord's application for a monetary award and to apply the security deposit was withdrawn. The Landlord may reapply.

The Landlord is hereby provided with an Order of Possession for service upon the Tenant, **effective 1:00 p.m., October 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: October 27, 2016

Residential Tenancy Branch