



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL; MNDC; RR; O

Introduction

This is the Tenant's Application for Dispute Resolution made October 14, 2016. The Tenant seeks to cancel a Notice to End Tenancy for Landlord's Use; compensation for damage or loss; a rent reduction; and "other" orders.

Both parties signed into the Hearing and gave affirmed testimony.

At the outset of the Hearing, I explained to the parties that Rule 2.3 of the Rules of procedure requires claims made on a single Application be related to each other. I find that the Tenant's claims for compensation, a rent reduction, and other orders are not sufficiently related to her application to cancel the Notice to End Tenancy. The Tenant stated that she wished to proceed with her application to cancel the Notice to End Tenancy, and therefore the remainder of her Application is dismissed **with leave to reapply**.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by fax. The Landlord's agent acknowledged that the documents were received on October 21, 2016.

The Landlord provided late evidence to the Residential Tenancy Branch on December 6, 2016. The Landlord's agent stated that he did not serve the Tenant with these documents and therefore, I did not consider them. I invited the Landlord to provide oral testimony with respect to its contents.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's Use issued September 27, 2016 (the "Notice"), be cancelled?

Background and Evidence

The Landlord's agent stated that the Notice was posted to the Tenant's door on September 27, 2016. The Tenant acknowledged receiving the Notice on September 27, 2016 "at midnight" after she returned from a walk.

I asked the Tenant why she did not make her Application for Dispute Resolution until October 14, 2016. She stated that she was ill and that she thought she had made it in time because she was told by the government agent that she was within one day of the deadline.

The Tenant did not apply for an extension of time to file her Application.

Analysis

Section 49(8) and (9) of the Act provides:

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days **after the date the tenant receives the notice.**

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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, my emphasis added]

This information is also provided on page 2 of the Notice that the Tenant acknowledged receiving on September 27.

Section 90 of the Act provides:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] **is deemed to be received** as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

[reproduced as written, my emphasis added]

The deeming provision of Section 90 is rebuttable. For example, if there is conclusive evidence that documents were received earlier or later than the dates set out in Section 90, then the date that the documents were actually received is the date to be applied. Therefore, based on the evidence provided, I find that the Tenant received the Notice on September 27, 2016.

The Tenant did not apply for an extension of time to file her Application; however, I find it probable that she would have asked for an extension if she believed that she had been advised that she did not make her Application in time.

Section 66 of the Act provides that I may extend a time limit only in exceptional circumstances. Residential Tenancy Policy Guideline 36 provides the following guidance with respect to extending a time period:

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]

I find that the Tenant's explanation for not complying with the 15 day time limit does not fall within the definition of "exceptional circumstances". Therefore, I find that she is conclusively presumed to have accepted that the tenancy ended on November 30, 2016, pursuant to the provisions of Section 49(9) of the Act.

I dismiss the Tenant's application to cancel the Notice. I find that the Notice complies with Section 52 of the Act. Pursuant to the provisions of Section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

I alerted both parties to the provisions of Section 51 of the Act, which states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[reproduced as written]

Conclusion

The Tenant's application to cancel the Notice to End Tenancy for Landlord's use is **dismissed**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. 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 07, 2016

Residential Tenancy Branch