



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for cause and the tenant applied for an order to set aside this notice and for more time to do so. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to dispute the notice to end tenancy?

Background and Evidence

The tenancy began on March 01, 2019. On March 30, 2019, the landlord served the tenant in person, with a one month notice to end tenancy for cause. The notice was in the approved format of two pages.

The tenant agreed that he was aware of the 10-day legislated time frame to make an application to dispute a notice to end tenancy for cause. The tenant also agreed that he had made application on April 18, 2019 which is 19 days after having received the notice to end tenancy.

The tenant stated that the reason for the delay in applying to dispute the notice was that he did not have sufficient funds to cover the filing fee of \$100.00. I informed the tenant that he could have applied for a waiver of the filing fee and he stated that he made "too much money" to be granted one.

The tenant testified that for the above reason he was unable to make an application to dispute the notice to end tenancy within the legislated time frame of 10 days.

Analysis

Based on the sworn testimony of both parties, I find that the tenant is deemed to have received the notice to end tenancy on March 30, 2019, as he was served in person. The tenant did not apply to dispute the notice until April 18, 2019, a full 19 days after receiving the notice. Based on the above, I find the tenant failed to file his application to dispute the notice, in a timely manner.

Section 47(4) of the Act provides that tenants have 10 days in which to dispute a one month notice to end tenancy for cause, failing which they are conclusively presumed to have accepted the end of the tenancy.

The tenant has applied for more time to apply to dispute the notice. I am unable to grant the tenant more time to make his application without proof that exceptional circumstances prevented him from complying with the statutorily prescribed timeframe.

Section 66(1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3).

Policy guideline 36 for the *Act* explains that 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 by the required time must be very strong and compelling. Furthermore, a "reason" without any force of persuasion is merely an excuse. Therefore, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The tenant testified that the reason for the delay was that he did not have sufficient funds to cover the filing fee and that he did not qualify for a waiver of the fee due to the amount of his income.

Based on the testimony of the tenant, I find that the tenant has insufficient evidence of a strong or compelling reason, or of exceptional circumstances, which would allow me to extend a time limit established by the *Act*. Therefore, I dismiss the request for an extension of time to apply to dispute the notice.

The tenant's claim to set aside the notice is dismissed. The notice is upheld and the tenancy will end in accordance with the notice.

I find that the landlord is entitled to an order of possession. The landlord has agreed to allow the tenancy to continue until June 30, 2019. I grant the landlord an order of possession effective this date. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven his case he must bear the cost of filing this application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by 1:00pm on June 30, 2019.

The tenant's application is dismissed in its entirety.

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: June 04, 2019

Residential Tenancy Branch