



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute codes: MT, CNC, MNDC

Introduction

This was an application by the tenants seeking an order cancelling a Notice to End Tenancy for cause, for a monetary order and for other unspecified relief. The hearing was conducted by conference call. The named parties participated in the hearing.

Background and evidence

The tenancy began on May 15, 2009 and runs from month to month with rent in the amount of \$700.00 including utilities due in advance on the first day of each month.

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on June 6, 2009. The tenants paid the rent on June 11, 2009 and the landlord allowed the tenancy to continue. On July 30, 2009 the landlord personally served the tenants with a one month Notice to End Tenancy for cause. The tenants acknowledged in their application that they received the Notice on July 30, 2009. Pursuant to section 47 of the Residential Tenancy Act, The tenants had 10 days to dispute the notice by making an application for dispute resolution. The tenants did not apply to dispute the Notice to End Tenancy until August 21, 2009. With respect to the delay in making application, the tenants claimed as follows:

(name of tenant) has had problems with his legs, he has been in and out of the hospital & back & forth from his doctor. Due to medical problems the eviction notice was put to the side. Plus the person helping them with the arbitration left to Calgary with all the papers and didn't return until the 15th of August. Can send a medical note later date.

Analysis and conclusion

The Residential Tenancy Policy Guidelines contain a discussion of the circumstances in which a Dispute Resolution Officer will extend a time limit such the time to dispute a Notice to End Tenancy. The relevant guideline provides as follows:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

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.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The tenants have not provided any form of documentation to support their contention that there were medical reasons that prevented the tenants from making the application within time. I note that there are two tenants and there is no suggestion that both tenants were incapacitated and unable to take steps to make an application within the allowed time. I consider that the reasons provided by the tenants have little force of persuasion and are mere excuses that do not amount to exceptional circumstances that would merit granting an extension of the time to dispute the Notice to End Tenancy.

Because the tenants have not applied to dispute the Notice to End Tenancy within the time provided; the tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenants' application to cancel the Notice to End Tenancy is dismissed. The landlord requested that I grant an order for possession in the event the tenants' application was dismissed. Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenants applied for a monetary order in the amount of \$748.00. According to the tenants the landlord disconnected the gas supply to the rental unit leaving them without heat and hot water. The tenants claimed that they hired someone on two occasions and paid them \$50.00 each time to inspect the hot water tank. The tenants also claimed amounts for hotel charges for showers and taxi fares to and from the hotel. The tenants submitted two handwritten receipts for charges to inspect the hot water tank. The tenants did not submit any other documents to support the remainder of their monetary claims.

The landlord submitted evidence that established that the gas supply was not disconnected. I do not have any evidence to show that the tenants contacted the landlord before they expended money on plumbing investigations and I have no evidence to show that a qualified person performed the work. The landlord testified that as soon as she learned that there was a problem with the hot water heater she had it serviced. The tenant did not provide documents or receipts to establish the remainder

of their monetary claims and I dismiss the tenants' application for a monetary order without leave to reapply.

Dated September 29, 2009.