

DECISION

Dispute Codes: MT, CNC and FF

Introduction

By application of June 6, 2011, the tenant seeks to have set aside a one-month Notice to End Tenancy for cause served in person on May 17, 2011. The tenant also seeks an extension of the time limit to bring this application and to recover the filing fee for this proceeding from the landlords.

Issues to be Decided

This application requires a decision first on whether the application is out of time or qualifies for an extension. If an extension is granted, it requires a decision on whether the Notice to End Tenancy of May 17, 2011 should be set aside or upheld on its merits.

Background and Evidence

This tenancy began on or about November 1, 1985. Rent is \$405 per month and while the landlord no longer has the original records, he did not contest the tenant's recollection that a security deposit of \$100 was paid on or about November 1, 1985.

As to the issue of whether the late application qualifies for an extension, section 47(4) of the *Act* permits a tenant receiving a Notice to End Tenancy for cause 10 days to make application to contest the notice. This time limit is reproduced on the Notice to End Tenancy under the heading, "Information for tenants who receive this notice to end tenancy."

In the present matter, the tenant was served notice in person on May 17, 2011 which would have permitted him up to May 27, 2011 to make the required application for dispute resolution. Therefore, the tenant's application of June 6, 2011 is 10 days late.

Section 66 of the *Act* states that the director's delegate may extend a deadline set by the *Act* "only in exceptional circumstances."

The test for “exceptional circumstances” is stringent and eliminates all but the most compelling and corroborated reasons for the late application.

In the present matter, the tenant stated that the application was late because when he first attended the Residential Tenancy Branch, he found that the office had moved. Under that circumstance, I would find that the application had been delayed by exceptional circumstances if it had been two or three days late.

However, the passing of 10 days between the deadline and the application is beyond what would have been justified by the circumstance of the branch office having relocated three to four kilometres while the listed telephone numbers were not changed.

The landlord has followed due process to the letter, following numerous verbal warnings with a written warning before issuing the Notice to End Tenancy, gathering six written submissions from other parties and taken photographs corroborating the alleged reasons for ending the tenancy.

I find that the tenant’s application is out of time and it is dismissed for that reason.

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession effective at 1 p.m. on July 31, 2011. Section 55(1)(a) of the *Act* compels the issuance of the order on a landlord’s request if a tenant’s application to set aside the notice to end fails or is dismissed.

Conclusion

The Notice to End Tenancy of May 17, 2011 is upheld and the landlord issued with an Order of Possession to take effect at 1 p.m. on July 31, 2011.

June 28, 2011