



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking additional time to file an Application, and seeking an order to cancel a Notice to End Tenancy issued for cause by the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Tenant supplied evidence late and this evidence was not before me or considered.

Issue(s) to be Decided

Do exceptional circumstances exist to extend the time limit to file an Application?

Background and Evidence

On May 26, 2011, the Landlord served the Tenant with a one month Notice to End Tenancy for cause, with an indicated effective date to end the tenancy of June 30, 2011 (the "Notice").

For background purposes, the Notice alleges the causes as repeated late payment of rent, the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and that the Tenant has put the Landlord's property at significant risk. According to the Application of the Tenant, the dispute with the Landlord regards access to the rental unit for treatment of bedbugs.

The Tenant testified he filed an Application for Dispute Resolution to dispute the Notice within 10 days of receipt of the Notice. The Tenant testified he did not go back to pick up the forms or hearing documents because he was ill. The Tenant testified he learned the first Application was considered abandoned because of this.

The Tenant then filed this second Application on June 28, 2011. According to the testimony of the Tenant he sent in evidence last week which supports he has a medical condition, although he testified he has no medical note to show he was too ill to pick up the documents for the first Application or to delay filing this Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant's Application must be dismissed as there is insufficient evidence that exceptional circumstances prevented him from filing this Application within the required time limit of the Act.

Section 66(1) of the Act requires that there be exceptional circumstances in order to extend a time limit under the Act. Policy guideline 36 relates to extending a time limit and sets out that a Dispute Resolution Officer may extend or modify a time limit **only in exceptional circumstances**. [Emphasis added.]

The guideline explains the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a Dispute Resolution Officer to extend that time limit.

The guideline explains 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. [Emphasis added.]

The Tenant did not include any evidence to support the claim he was too ill to pick up the hearing documents for his first Application, or too ill to immediately file this Application, when he learned the first Application was treated as abandoned. He testified he provided other medical evidence regarding his ongoing medical condition, however, this was submitted late, was not before me, and was therefore, inadmissible under the Act.

This leads me to find that the Tenant's application does not meet the exceptional circumstances required in section 66 of the Act to extend a time limit and I dismiss the Application.

Upon my dismissal of the Application, the Landlord orally requested an order of possession. Under section 55 of the Act, I must grant that request.

The Landlord requested an order effective upon two days service, explaining he would work with the Tenant to find a suitable time for him to vacate the rental unit. I must grant that order.

Conclusion

The Tenant had insufficient evidence to prove there were exceptional circumstances that prevented him from filing his Application within the required time limit.

The Landlord requested and was granted an order of possession under section 55 of the Act.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: July 25, 2011.

Residential Tenancy Branch