



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, MNR, MNSD, MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent, compensation for damage or loss, and recovery of the filing fee, and a request to retain the security deposit. The Tenants’ Application requested that they be granted more time for their Application, and that the One Month Notice to End Tenancy for Cause be cancelled, and requested a monetary order for recovery of their filing fee.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord indicated several matters of dispute on their Application. The Landlord agreed that there is only one main issue that is appropriate to deal with during this proceeding, the One Month Notice to End Tenancy. The Landlord’s other issues in dispute are monetary claims which were premature as of the date of their Application. Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Landlord’s other disputes set out on their Application with liberty to reapply.

Issue(s) to be Decided

Have the Tenants filed their Application to dispute the One Month Notice within the timeframes allowed by section 49 the Residential Tenancy Act (the “Act”)?

If not, have the Tenants established exceptional circumstances, pursuant to section 66(1) of the Act, to have the time period for filing their Application extended?

Is the Landlord entitled to an order of possession and a monetary order for the filing fee?

Background and Evidence

The Landlord testified that the Tenants were served with the One Month Notice to End Tenancy by posting it on the door of the rental unit on September 19, 2011 at 5:00 P.M. The Landlord stated that they brought a witness HG to see the posting of the Notice. The Landlord stated that she checked back at the rental unit at 8:44 P.M. the same evening and saw that the Notice was not on the door and believed it was received by the Tenants.

The Tenants testified that only one of them was in the country at that time. Tenant JA was in Italy. Tenant JC testified that he was in the rental unit between September 19 and 27, 2011 and that he received the One Month Notice to End Tenancy. Tenant JC is not sure what date he received it on, and stated that he had many papers and other mail that he was not looking at. Tenant JC stated that he did not know how the Notice was delivered. Tenant JC stated that he was very busy with his business at that time and that Tenant JA was away in Italy and that Tenant JA had been in hospital in Italy. The Tenants stated that they had another person living with them, a lawyer, AD, and that this has caused the Landlord to issue the One Month Notice. They indicated that the Landlord refused to talk to them about the Notice.

Tenant JC stated that they filed their Application for Dispute Resolution online on October 05, 2011; however it was not processed immediately as they had not filled out the form correctly. Tenant JC stated that after communications with the Residential Tenancy Office he provided the necessary information for the Application to proceed and on October 12, 2011 he received a letter with a Hearing date to serve on the Landlord.

Tenant JA testified that she was away guiding a tour in Italy in September when she had to be hospitalized. Tenant JA stated she has a medical condition since she was young but while in Italy she had internal bleeding and had to be hospitalized. She confirmed that Tenant JC was in the rental unit at all material times, and stated he was trying to run his business and was very stressed out by everything that was happening. The Tenants confirmed that they still reside in the rental unit at this time.

The Landlord stated that when the Tenants failed to file their Application for Dispute Resolution within 10 days of the Notice being served, they proceeded to find new Tenants for the rental unit. The Landlord states that they have new Tenants who have signed a tenancy agreement to move into the rental unit for November 15, 2011. The Landlord states that the current Tenants in the rental unit refuse to move out and have provided a cheque for November 2011, however the Landlord is refusing to cash this cheque. The Landlord is requesting an Order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenants were properly served with the One Month Notice to End Tenancy on September 19, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by posting it on the door of the rental unit, it was deemed to have been served by September 22, 2011, which is three days from the date posted. The Notice states that the Tenants had 10 days to apply for Dispute Resolution, or the tenancy would end on October 31, 2011. The Tenants did not apply to dispute the Notice to End Tenancy within ten days from the date of service. The deadline to do so was October 02, 2011, as this fell on a Sunday it would have been acceptable for the Tenants to file their Application no later than Monday October 03, 2011. The Landlord indicated on the Notice that the Tenants had until October 31, 2011 to move out. The move out date is at least one month from the date of service based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Tenants filed their Application for Dispute Resolution on October 05, 2011. Section 66(1) of the Act only allows for more time for the filing of an Application if exceptional circumstances are established. Residential Tenancy Policy Guideline 36 states that the word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. This Policy provides the example of the tenant being in the hospital and unable to contact anyone to represent them at all material times. In this case Tenant JC confirmed that he was in the rental unit and not hospitalized at all material times.

The Tenants are not entitled to an extension of the time period for filing an Application for Dispute Resolution, as I find their reasons are not exceptional circumstances. As the Tenants failed to dispute the One Month Notice in the 10 days allowed by the Act they are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenants' Application, and I find that the Landlord is entitled to an order of possession.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding, and I order that the Landlord may deduct this amount from the security deposit which they hold. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

I dismiss the Tenants' Application.

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants and may be enforced in the Supreme Court.

I order that the Landlord may deduct \$50.00 from the security deposit. The balance of the security deposit must be dealt with in accordance with the Act.

The order of possession accompanies the Landlord's copy of this decision.

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: November 04, 2011.

Residential Tenancy Branch