



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to allow him more time to dispute a Notice to End Tenancy, and 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.

Issue(s) to be Decided

Are there exceptional circumstances that would allow an extension of the time limit for the Tenant to file this Application?

Background and Evidence

The Agent for the Landlord testified that he personally posted to the rental unit door a one month Notice to End Tenancy for cause on September 26, 2011, which had an effective end date of the tenancy as October 31, 2011 (the "Notice").

In evidence the Landlord has submitted a signed proof of service by a third party witness who sets out they saw the Agent for the Landlord post the Notice on September 26, 2011, to the rental unit door.

Under the Act, the Notice, when posted to a door, is deemed served three days later. Therefore, I find that the Notice was deemed to be served on the Tenant on September 29, 2011.

The Notice sets out that the Tenant had a right to dispute the Notice within 10 days by filing an Application with the Branch.

Under the Act, the Tenant had 10 days from September 29, 2011, to file this Application. As the 10 days ended on Sunday October 9, and the Thanksgiving holiday was on October 10, the last day the Tenant could have filed his Application was October 11, 2011.

On page two, the Notice also explains that, "A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time."

The Tenant filed his Application on October 25, 2011. The Tenant testified that he was out of town and did not see the Notice until October 24, 2011. The Tenant testified that no one was checking his rental unit while he was away. He further testified that no one told him he had to provide evidence in support of his claims.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant has failed to prove there were exceptional circumstances that prevented him from filing this Application on time. Therefore, I dismiss the Tenant's Application.

Section 59 of the Act sets out that a Dispute Resolution Officer may extend a time limit only in exceptional circumstances.

The policy guideline for the Act explains what ***exceptional circumstances*** are.

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 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 did not include any evidence to support his claim he was out of town.

I also find that the Tenant lacks credibility, based on his testimony that no one informed him he had to provide evidence in support of his claim. The Notice itself explains the Tenant needed, “proof that you had a serious and compelling reason for not filing on time.”

The hearing package provided to the Tenant at the outset of his Application explains the deadlines for supplying evidence required for a hearing.

Furthermore, the Notice of Hearing sets out, “Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing.”

Therefore, I find that the Tenant’s application does not meet the exceptional circumstances required in order to extend the time limit to Apply to cancel the Notice, and his Application is dismissed. The Tenant must vacate the rental unit in accordance with the Notice.

The Landlord has liberty to apply for an order of possession, as it was not orally requested at the time of the hearing.

This decision is final and binding on the parties, except as otherwise provided 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: November 07, 2011.

Residential Tenancy Branch