



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for more time to cancel the Notice to End Tenancy; to request that the Two Month Notice to End Tenancy for landlords use of the property is cancelled; and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*, One landlord was served in person on October 31, 2011 and one landlord was served by registered mail on November 01, 2011. Mail receipt numbers were provided in the tenant's documentary evidence. One landlord was deemed to be served the hearing documents on October 31, 2011 and the other landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel the Notice to End tenancy?

- Is the tenant entitled to have the Two Month Notice to End Tenancy cancelled?

Background and Evidence

The tenant testifies that this month to month tenancy started on August 01, 2009. The rent is \$700.00 per month and is due on the first day of each month. The tenant states he was served in person with a Two Month Notice to End Tenancy on October 05, 2011. This Notice stated that the rental unit will be occupied by the landlord or the landlords spouse or a close family member of the landlord or the landlords' spouse.

The tenant testifies that he is almost paralyzed so had difficulty getting into the Residential Tenancy Office to file his application within the required time frame to cancel the Notice.

The tenant testifies that the landlords appear to have separated and the male landlord wants to move into the tenant's rental unit. The tenant testifies that the male landlord has been overseas for an extended period of time and the other landlord has been taking care of all matters relating to the tenancy. The tenant states that due to his disability and the equipment he has to assist his living it would not be easy for him to move from the rental unit.

Analysis

The tenant had 15 days to file an application to dispute the Notice to End Tenancy. The tenant did not file his application within this time frame but according to s. 66 of the *Act*. The director may extend a time limit established by this Act in exceptional circumstances. The tenant has testified that his disability prevented him from filing his application to cancel the Notice within the time frame allowed. As the landlords have not appeared at the hearing to dispute this it is my decision that the tenant's disability

prevented him taking the required action to cancel the Notice to End Tenancy within 15 days of receiving the Notice.

In Order to support the Notice to End Tenancy for Landlords use of the property, the landlords bear the burden of proving that they acted in good faith when they served the tenant with the Two Month Notice to End Tenancy and one or both of the landlords or a close family member do intend to reside in the rental unit.

As neither of the landlords attended the hearing to give oral testimony and submit to cross examination and no documentary evidence has been submitted to prove the reason given on the Two Month Notice; it is my decision that the Two Month Notice is set aside and the tenancy will continue.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated October 05, 2011 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, he is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from his next rent payment when it is due and payable to the landlords.

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 22, 2011.

Residential Tenancy Branch