



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 allowing the Tenant more time to dispute a Notice to End Tenancy and an order to cancel a one month Notice to End Tenancy for cause, issued 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 which would allow an extension of time to file the Application to dispute the Notice to End Tenancy?

Background and Evidence

The Tenant testified and submitted in evidence that he was served with a one month Notice to End Tenancy for cause on January 10, 2012. The effective date of the Notice to End Tenancy was February 29, 2012.

On February 29, 2012, the Tenant filed this Application to dispute the Notice.

The Tenant testified he did not know he had to dispute the Notice within 10 days of being served with it. The Tenant testified he has mental issues.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Application of the Tenant must be dismissed, as I do not find there are exceptional circumstances here which would warrant extending the statutory time limit.

Under section 66 of the Act, a time limit under the Act may only be extended in exceptional circumstances. Policy Guideline 36, referring to section 66, explains that,

“The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.” [Emphasis added.]

In this instance the Tenant testified he did not know he had to file an Application to dispute the Notice within 10 days of being served. The Tenant testified he has mental issues.

The Notice itself contains written instructions that if the Tenant wanted to dispute the Notice he had 10 days to file his Application.

The Tenant did not provide any persuasive evidence that the mental issues prevented him from filing the Application on time, such as a note or letter from his doctor explaining he was unable to file the Application for medical reasons.

The Tenant suggested that the form he used to obtain a waiver of the filing fee for the Application indicates he is a person with disabilities. This form was reviewed and it does not disclose *what* disabilities the Tenant may have. This form simply sets out that the Tenant is receiving financial assistance as a person with disabilities, and was used so that the Tenant could prove he qualifies for a fee waiver.

I find that the Tenant has failed to prove there were exceptional circumstances that prevented his from filing this Application within the required timeline, and therefore, I dismiss the Application of the Tenant.

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

I grant and issue the Landlord an order of possession effective two days after service on the Tenant. This order is enforceable in the Supreme Court.

Lastly, as explained during the hearing, the Landlord must file an Application for the unpaid rent that the Tenant owes him. The Landlord is unable to make a monetary claim under the Tenant's Application.

This decision is final and binding on the parties, except as 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: March 15, 2012.

Residential Tenancy Branch