



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order granting more time to make an application to cancel a notice to end tenancy, an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and to make submissions to me.

I have reviewed all evidence before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for a monetary order is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for that order, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Is the tenant entitled to an extension of time to apply to cancel the notice to end tenancy for cause?

If so, is the tenant entitled to an order cancelling the Notice and to recover the filing fee?

Background and Evidence

Although no tenancy agreement was entered into evidence, I heard testimony that this tenancy started in 2009 and monthly rent is \$900.00. The tenant said he did not pay a security deposit.

Neither party submitted any documentary evidence; however the parties agreed that the landlord served the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice") by leaving it with the tenant on July 31, 2012, listing a move out date of August 30, 2012. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to August 31, 2012.

The Notice informed the tenant that he had ten days to dispute the Notice.

The tenant applied to dispute the Notice on August 23, 2012, 23 days after he was served with the Notice. By way of an explanation, the tenant said that he spoke with the landlord's ex-husband and due to these conversations about cleaning the residential property, the tenant presumed the landlord did not intend to act on the Notice. The tenant, after speaking with the landlord, realized this was not the case, leading to the filing of his application for dispute resolution.

In the hearing the landlord did not orally request an order of possession.

Analysis

Under section 66(1) of the *Residential Tenancy Act*, an extension of time can only be granted where the applicant, the tenant in this case, has established that there are exceptional circumstances, such as a medical emergency or an earthquake.

I find that the tenant has failed to prove that exceptional circumstances prevented him from filing his application within 10 days of having been served with the Notice, and I therefore deny his application for an extension of time. The tenant's application to cancel the notice to end tenancy for cause is dismissed, and he is therefore conclusively presumed to have accepted that the tenancy ended on August 31, 2012, the effective date of the notice to end tenancy for cause.

As the tenant was unsuccessful in his application, I deny the tenant recovery of the filing fee.

Conclusion

The tenant's application for an extension of time and for an order cancelling a Notice to end tenancy is dismissed.

The portion of the tenant's application seeking a monetary order is dismissed, with leave to reapply.

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* and is being mailed to both the applicant and the respondent.

Dated: September 25, 2012.

Residential Tenancy Branch