



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC O

Preliminary Issues

The Landlord advised that her name was spelled incorrectly on the application for dispute resolution. Upon further clarification she requested that her name be removed from the application and replaced with the Landlord's name as noted on the tenancy agreement. The Tenants confirmed the legal name of the Landlord and confirmed that the name listed on their application was an Agent for the Landlord.

As neither party disputed the request to amend the name of the respondent Landlord I approved the request and the application has been amended, pursuant to section 64 (3)(c) of the *Act*.

The Landlord had arranged to have all three of her witnesses sign into the hearing at the outset. Upon considering the nature of this dispute I requested that Witness 2 and Witness 3 disconnect from the hearing and informed them that I would call them back into the hearing if their testimony was required. Witness 1 was able to provide her testimony and each party was given the opportunity to ask questions of the Witness before she disconnected from the hearing. After Witness 1 disconnected from the hearing I proceeded to hear from each Tenant and the Landlord, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for more time to make an application to cancel a Notice to End Tenancy, to cancel a Notice to end tenancy issued for cause, and for other reasons.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenants be granted more time to make an application to cancel the Notice to end tenancy for cause?

Background and Evidence

The Landlord confirmed that they did not submit documentary evidence and argued that they did not receive the Tenants' evidence in the required format or within the required timeframes as they received some of the documents by e-mail on January 2, 2012.

The Tenant E.B. confirmed that she did not provide a copy of the 1 Month Notice in their evidence and that she sent the Landlord some of their evidence by e-mail January 2, 2012. She noted that other documents, such as the Doctors' note were provided to the Landlord prior to sending the January 2, 2012 e-mail.

The parties agreed that they entered into a month to month tenancy that began on June 1, 2012 which listed E.B. as Tenant and her son N.B. and his girlfriend as occupants. E.B. never intended on living at the rental unit and was named as Tenant to be a signatory to the agreement. Rent is payable on the first of each month in the amount of \$650.00 and on May 24, 2012 the Tenants paid \$325.00 as the security deposit.

E.B. confirmed that on November 1, 2012 the Landlord personally served her with a 1 Month Notice to end tenancy that was dated October 31, 2012. She advised that neither she nor either of the two occupants made application to dispute the Notice prior to filing this application on-line on November 22, 2012.

E.B. stated that she chose to wait to file through the legal process of dispute resolution because she wanted to apologize to the Landlord and the other tenants in attempts to resolve the problem on their own. She argued that her son, N.B. was not well and that he has since sought medical attention. She confirmed that she did not live with N.B. and his girlfriend and that she managed the application process on her own while her son sought medical assistance and resolved the issues with his girlfriend.

E.B. said that once she decided to go to dispute resolution the application process took time as she needed to file for a BCEID registration number and then had to put her evidence package together. When asked why she waited twenty one days before filing the application she stated she had entered into a verbal agreement with the Landlord where they agreed that N.B.'s girlfriend would have to move out and N.B. could stay. After N.B. sought medical assistance E.B. singularly decided, without consultation with the Landlord, that N.B. would not have to kick out his girlfriend. When the situation could not be resolved with the Landlord and other tenants she decided to make an application to cancel the Notice.

The occupant Tenant N.B. stated he had nothing to add.

The Landlord confirmed serving the Notice to E.B. on November 1, 2012 and argued that they were not unreasonable and would allow N.B. and his girlfriend to stay in the unit until after Christmas. She denies entering into a verbal agreement with E.B. to allow N.B. to continue to stay in the unit and stated that she was adamant that they all had to move out.

In closing, I asked the Landlord if she had anything further. The Landlord stated “nothing else was needed” and stated she is adamant that the Tenants must move out as a result of this eviction notice.

Analysis

The Tenants did not serve copies of their evidence in accordance with section 3.5(a) of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenants have not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Tenants’ evidence will not be considered in my decision. I did however consider the Tenants’ testimony.

When a tenant receives a 1 Month Notice to end tenancy for cause the Act stipulates they have ten days to dispute the Notice and request that it be cancelled. In this case the Notice was personally served to the Tenant E.B. on November 1, 2012 and their application was not filed until November 22, 2012, twenty one days after they received the Notice. The effective date of the Notice would automatically correct to **December 31, 2012**, in accordance with section 53 of the Act.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The applicant bears the burden to prove there were exceptional circumstances that prevented them from making their application within the required time frame.

The Tenants submitted that the delay in filing their application to cancel the Notice was due to the following: (1) they made a personal choice to attempt to resolve the issue on their own; (2) the tenant occupant, N.B. has medical issues; and (3) they entered into a verbal agreement with the Landlord whereby N.B. would be allowed to continue with the tenancy if he made his girlfriend move out.

After careful consideration of the foregoing I find as follows: (1) a personal choice is simply a choice and does not prove there was exceptional circumstances which prevented someone from making an application; (2) I accept that N.B. may have a medical issue that would have delayed him in making an application however, the application was filed by E.B. not N.B. and there is no evidence to prove E.B. was faced with exceptional circumstances that would have prevented her from filing the application on time; and (3) the Landlord denied entering into a verbal agreement therefore, the Tenants have not met the standard of proof that there was such an agreement that would have caused them to delay in filing their application. Therefore, I find that I cannot accept this application to cancel the notice to end tenancy as it was filed outside of the legislated time frame.

Conclusion

The application is HEREBY DISMISSED, without leave to reapply.

The 1 Month Notice is upheld and this tenancy ended on the effective date of the Notice, **December 31, 2012**. The Tenant's are required to vacate the rental unit, in accordance with the Notice. If the Tenants fail to vacate the property the Landlord is at liberty to file an Application for Dispute Resolution to Obtain an Order of Possession.

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: January 04, 2013.

Residential Tenancy Branch