



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to allow her more time to file her application to cancel the One Month Notice to End Tenancy and to cancel the One Month Notice to End Tenancy for cause.

The tenant served the landlord with a copy of the Application and Notice of Hearing. The landlord confirmed receipt of this package. I find that the landlord was properly served pursuant to s. 89 of the *Residential Tenancy Act (Act)* with notice of this hearing.

The landlord and tenant appeared. Both parties gave affirmed testimony and were provided the opportunity to make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel the One Month Notice to End Tenancy?
- If more time is granted, is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this tenancy started on December 01, 2012. The tenant testifies that her rent for this unit is \$500.00 per month and the landlord testifies that rent for this unit is \$300.00 per month. Rent is due on the first of the month.

The parties agree that the landlord served the tenant with a One Month Notice to End Tenancy on December 11, 2012 in person. Therefore the tenant had 10 days from December 11, 2012 to file her application to dispute the landlords One Month Notice. The tenant filed her application on January 07 and amended it on January 11, 2013; 27 days after being deemed to have received the Notice. The tenant testifies that she could not file her application any sooner because her grandfather was ill; the tenant was fighting other court cases and because of the Christmas holidays. The tenant therefore seeks more time to file her application to cancel the Notice.

The landlord has orally requested an Order of Possession at the hearing to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 66(1) of the *Residential Tenancy Act* states:

Director's orders: changing time limits, and provides in part as follows:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [starting proceedings] or 81(4) [decision on application for review].

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part:

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 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.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times.

Consequently, I find that the reasons provided by the tenant for the late filing of her application, do not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why her application was filed on the 27rd day after receiving the Notice to End Tenancy I must dismiss the tenants' application to set aside the landlords One Month Notice to End Tenancy for cause.

As the landlord has requested an Order of Possession at this hearing I find the One Month Notice is upheld as the tenant did not cancel it within the allowable time frame and the tenant is conclusively presumed to have accepted that the tenancy ended on the effective

date of the Notice. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

The tenant has also applied to suspend or set conditions on the landlord's right to enter the rental unit. As the tenancy will end I am not required to address this section of the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: February 05, 2013

Residential Tenancy Branch

