



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, O

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 and other issues.

The tenant served the landlord with a copy of the Application and Notice of Hearing in person on April 15, 2013. 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's agent and the tenant appeared. Both parties gave sworn testimony and were provided the opportunity to make submissions to me. On the basis of the solemnly sworn 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 month to month tenancy started on September 01, 2012. Rent for this unit is \$850.00 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 March 28, 2013 in person. Therefore the tenant had 10 days from March 28, 2013 to file their application to dispute the landlords One Month Notice. The tenant filed the application on April 12, 2013; 14 days after being deemed to have received the Notice. The tenant testifies that he could not file the application any sooner because the tenant was caring for his elderly mother. The tenant therefore seeks more time to file the application requests that the landlords allow the tenant to remain in the unit until May 31, 2013.

The landlord's agent testifies that the landlords seek immediate possession of the rental unit in order to mitigate their losses. The landlord's agent orally requests an Order of Possession at the hearing to take effect as soon as possible.

Analysis

I have carefully considered the evidence before me, including the testimony 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 the 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 the application was filed on the 14th day after receiving the Notice to End Tenancy I must dismiss the tenant's application to set aside the 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*.

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: May 10, 2013

Residential Tenancy Branch

