



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 an Application for Dispute Resolution by the tenant to allow the tenant more time to file this application to cancel the Notice to End Tenancy and to cancel the One Month Notice to End Tenancy.

The tenant served the landlords with a copy of the Application and Notice of Hearing in person on April 18, 2013. I find that the landlords were properly served pursuant to s. 89 of the *Residential Tenancy Act (Act)* with notice of this hearing.

The landlords 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 around three years ago although the tenant states it may have been longer. No tenancy agreement was put in place at the start of the tenancy and this was a verbal agreement between the parties. Rent for this unit is \$850.00 per month. Rent is due on the first of the month.

The landlords testify that they served the tenant with a One Month Notice to End Tenancy on March 21, 2013. This was served in person to the tenant's girlfriend who was apparently residing in the rental unit at the time. The notice has an effective date of April 30, 2013 and gave the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has
 - (iii) Put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to:
 - (i) Damage the landlords' property
 - (iii) Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord PE testifies that the landlords seek immediate possession of the rental and orally requests an Order of Possession at the hearing to take effect as soon as possible. The landlord testifies that a year ago during an inspection there was equipment found at the rental unit for growing Marijuana. The tenant was warned that any growing of Marijuana plants would result in eviction from the rental unit. The landlord testifies that during a routine inspection of the unit while the tenant's girlfriend, who apparently was residing in the unit, was present the landlord noticed a strong smell of Marijuana. The landlord PE testifies that during the inspection four Marijuana plants were found in buckets in an open closet. PE testifies that the tenant's girlfriend became abusive so the landlord left the unit and called the police. PE testifies that the police attended the unit and removed and destroyed the Marijuana plants. The police later spoke to the landlords and informed them that as the tenant's girlfriend had willingly given up the plants no charges would be pressed against her.

The landlord PE testifies that due to the previous warning given to the tenant a One Month Notice was served upon the tenant and the tenant's girlfriend on March 21, 2013. The landlord testifies that when they later spoke to the tenant they were willing to give the tenant more time to move out and the tenant was supposed to come up with a plan to do that, however the tenant failed to do so. The landlord testifies that the tenant has not paid rent for May, 2013.

The tenant testifies that at the time service of this document took place the tenant was in jail and was only released on April 16, 2013. The tenant testifies that the landlords informed the tenant the next day that the tenant was to vacate the unit and so the tenant filed this application on April 18, 2013. The Notice informs the tenant that the tenant has 10 days to file an application to cancel the Notice. The tenant did not file this application within the 10 allowable days. The tenant testifies that he could not file the application any sooner because as he was in jail he was not aware of the Notice. The tenant therefore seeks more time to file the application.

The tenant testifies that it is not illegal to own equipment to grow marijuana. The tenant testifies that the plants found by the landlord belonged to his girlfriend's son who had dropped these plants off overnight and was due to collect them the next day. The tenant testifies that his girlfriend informed the tenant that they were only baby plants.

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.

The tenant has testified that he was in jail when the Notice to End Tenancy was served and therefore could not file his application to cancel the Notice within the required time frame. However, I find the tenant’s girlfriend who was staying at the rental unit during that time could have filed on behalf of the tenant within the time frame. I further find the tenant has provided no persuasive evidence to support the truthfulness that the tenant was in jail until April 16, 2013. Consequently, as the tenant has been unable to prove

any exceptional circumstances as to why the application was not filed within 10 days 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 17, 2013

Residential Tenancy Branch

