



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT and CNQ

Introduction

This hearing was convened on an application made by the tenant on May 31, 2013 seeking to have set aside a two-month Notice to End Tenancy served on April 29, 2013 and setting an end of tenancy date of June 30, 2013 for failure to qualify for rent subsidy. The tenant also applied for an extension of the time limit within which such applications can be made.

Section 49.1(5) of the *Act* states and the Notice to End Tenancy document repeats the requirement that a tenant receiving Notice to End Tenancy for failure to qualify for a rent subsidy may challenge the notice by making application for dispute resolution with 15 days of receipt of the notice.

Section 49.1(6) of the *Act* states that if the tenant does not make application within that time limit, the tenant is conclusively presumed to have accepted that the tenancy ended on the date set by the notice and must vacate by that date.

In the present matter, the tenant made application a full month after receipt of the notice.

Section 66(1) of the *Act* provides that the director's delegate may extend a time limit established by the *Act*, "only in exception circumstances."

Residential Policy Guideline 34 states, in part, that:

"The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator 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 “

In the present matter, the tenant gave evidence that she delayed making application as she believed negotiations were on going. However, letters from the executive director dated May 16, 2013 and from the property manager dated May 23, 2013 gave ultimatums rather than verification of negotiation. Both reiterated that bank statements the tenant submitted in support of her subsidy claim could not be accepted because large sections had been wiped out. The first letter stated that if (unedited) bank statements were not received by May 23, 2013 the Notice to End Tenancy would remain in effect. The second letter said the same but gave a May 27, 2013 deadline.

I find no indications in the landlords' statements that would have led the tenant to believe the Notice to End Tenancy might be withdrawn for any reason other than provision of the bank full bank statement which was refused by the tenant.

Therefore, I find no exceptional circumstances that would permit me to extend the time limit for the tenant's application.

Therefore, I dismissed the tenant's application as out of time without leave to reapply.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's oral request when a tenant's application to set aside a Notice to End Tenancy is dismissed. The landlord agreed to an Order to take effect on July 31, 2013.

Accordingly, the landlord's copy of this Decision is accompanied by an Order of Possession effective at 1 p.m. on July 31, 2013, for service on the tenant. The Order 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: June 26, 2013

Residential Tenancy Branch

