



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT EMERGENCY AID SOCIETY - FIRST PLACE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MT, OLC, RPP, OPT, AAT

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for more time to do so. The tenant also applied for an order directing the landlord to comply with the *Act*, return the tenant's property and allow the tenant access to the unit. The tenant applied for an order of possession, so that she could resume tenancy. In her written submission the tenant has applied for an administrative penalty of \$5,000.00 to be levied on the landlord for a breach of the *Act*.

Both parties attended the hearing and had opportunity to be heard.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find that the tenant requested that an administrative penalty be levied on the landlord for denying the tenant access to the rental unit. As this portion of the tenant's application is unrelated to the main section which is to cancel the one month notice, I dismiss this section of the tenants claim with leave to reapply.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Has the tenant filed her application on time, or were there exceptional circumstances that prevented her from filing on time? Is the tenant entitled to the remedies that she has applied for?

Background and Evidence

The landlord served the tenant with a notice to end tenancy for cause on May 07, 2013 by posting the notice on the door to the rental unit. The notice was served in the appropriate two page format. The tenant agreed that she received the notice on May 09, 2013 and stated that she chose not to read it and therefore did not dispute it.

The landlord testified that the tenant has mental health issues that cause her to be preoccupied with electricity. The tenant agreed that she had cut all the wires to her electrical panel resulting in a power outage to three floors. After this incident, the tenant was hospitalized and shortly after the landlord met with the tenant and her social worker to discuss a return plan. During this meeting, the tenant agreed to sign a waiver stating that she understood that in the event she caused more damage to the rental unit, she would be evicted. The tenant also agreed to seek help and pay for the damage she had caused, in monthly installments. The tenancy resumed on April 09, 2013.

Shortly after, the tenant suffered another episode and was admitted to the hospital in the first week of May. Upon inspection of the unit, the landlord found that the tenant had caused extreme damage to the electrical panel, the electrical appliances and the unit in general. The landlord filed copies of photographs of the condition of the unit to support his oral testimony.

The tenant refused to meet with the landlord to discuss her return to the rental unit and also refused to provide the landlord with information regarding the status of her mental health. The landlord stated that as a service provider of housing to 129 citizens, in the interest of the safety of the other occupants and staff, the landlord needed to be informed of the tenant's mental health status and the risks associated with it, before he would allow the tenant to move back in.

The landlord filed a log of the tenant's activities through the tenancy that started in July 2012. There are numerous incidents involving activating the fire alarm, threats of violence, damage to the rental unit, verbal altercations and death threats to staff and aggressive behavior towards staff and other occupants.

In the interest of the safety of all, the landlord served the tenant with the notice to end tenancy for cause and did not permit the tenant to access the rental unit without an escort. The tenant's keys were taken away and the landlord offered the tenant alternative accommodation at one of the shelters that the landlord operates.

The landlord stated that the tenants belongings were boxed and documented and were in storage waiting for pick up. During the hearing the parties agreed that the tenant would pick up her belongings during the week of July 29 to August 02 with a courtesy call to the landlord providing him with at least one hour notice.

Analysis:

Under section 47(4) of the Act, the tenant had to dispute the notice within 10 days, or by May 19, 2013.

The tenant filed her application on June 21, 2013, some 32 days past the time required by the *Act* to file it. Based on the above, I find the tenant failed to file her application to dispute the notice, in a timely manner.

Policy guideline 36 for the *Act* sets out that an Arbitrator may extend or modify a time limit ***only in exceptional circumstances***. The guideline explains 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 by the required time must be very strong and compelling. Furthermore, a "reason" without any force of persuasion is merely an excuse. Therefore, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The tenant testified that she saw the notice but chose to ignore it by not reading it. I find the tenant had insufficient evidence of a strong or compelling reason, or of exceptional circumstances, which would allow me to extend a time limit established by the *Act*. Therefore, I uphold the notice to end tenancy. Since the tenancy has ended, the tenant's application for an order of possession and for an order directing the landlord to comply with the *Act* and allow the tenant access to the unit is moot.

Conclusion

The tenant's application for an administrative penalty is dismissed with leave to reapply. The tenant may pick up her belongings as per the arrangement made during the hearing. The remainder of the tenant's application is dismissed.

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: July 30, 2013

Residential Tenancy Branch

