



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to cancel a Notice to End Tenancy; to cancel the One Month Notice to End Tenancy; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. Both parties provided late evidence to the Residential Tenancy Office and the other party. Both parties did not raise any objections to this evidence being considered with the exception of five pages of the tenants evidence that was not served upon the landlord until the day before the hearing.

Issue(s) to be Decided

- Is the tenant entitled to more time to cancel the Notice to End Tenancy?
- If so is the tenant entitled to have the One Month Notice cancelled?

Background and Evidence

The parties have included a copy of the tenancy agreement in documentary evidence which shows that this tenancy started on June 01, 2012 for a fixed term tenancy which has since reverted to a month to month tenancy. Rent for this unit is shown as \$750.00 per month due on the first day of each month.

The parties agree that the tenant was served with a One Month Notice to End Tenancy which was posted on the door of the tenant's rental unit on June 05, 2013. This Notice contained two reasons to end the tenancy. The tenant had 10 days to file an application to cancel the Notice as per the instructions given on page two of the Notice.

The tenant testifies that she was very stressed and sick after receiving this Notice and was seeing a chiropractor. The tenant testifies that she was not able to file her application to dispute the Notice within the 10 days but did file her application on June 24, 2013.

The landlord orally requests that the Notice is upheld and seeks an Order of Possession effective as soon as possible.

Analysis

The landlord served the tenant with a One Month Notice to End Tenancy on June 05, 2013. As this Notice was posted to the tenant's door it is deemed to have been served three days later on June 08, 2013 pursuant to s. 90 of the *Act*. Therefore the tenant had 10 days from June 08, 2013 to file her application to dispute the landlord's One Month Notice. The tenant filed her application on June 24, 2013; 16 days after being deemed to have received the Notice.

I have carefully considered all the evidence before me, including the sworn 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 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 not filed within the allowable 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 refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)*:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

On the basis of this, I uphold the landlords One Month Notice to End Tenancy and grant the landlord an Order of Possession effective on the date given on the Notice of July 31, 2013.

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 **on July 31, 2013**. 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: July 24, 2013

Residential Tenancy Branch