



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for unpaid rent.

The tenant served the landlord with a copy of the Application and Notice of Hearing on July 19, 2013. The landlords confirmed receipt of this package. I find that the landlord was properly served pursuant to s. 89 of the *Residential Tenancy Act (Act)* with notice of this hearing.

The landlords and one tenant appeared. Both parties gave affirmed testimony and were provided the opportunity to make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this tenancy started on June 15, 2013. Rent for this unit was \$1,250.00 per month and the landlord testifies that this was reduced to \$1,150.00 per month. Rent is due on the first of the month.

The parties agree that the landlord served the tenants with a 10 day Notice to End Tenancy on July 13, 2013 in person. Therefore the tenants had five days from this date to file their application to dispute the landlords Notice. The tenants filed their application on July 19, 2013, six days after being deemed to have received the Notice. The tenant attending testifies that they could not file sooner because of the weekend.

The landlords have orally requested an Order of Possession at the hearing to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn evidence 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 their application, do not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. The tenants did not apply for more time to file their application and have been unable to demonstrate any exceptional circumstances as to why their application was filed on the sixth day as that day did not fall on a weekend but rather July 19, 2013 fell on a Friday. Consequently I must dismiss the tenants' application to set aside the 10 Day Notice to End Tenancy for unpaid rent.

As the landlord has requested an Order of Possession at this hearing and the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice pursuant to s.46(5) of the *Act*, I find the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply. The 10 Day Notice to End Tenancy for unpaid rent dated July 13, 2013 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 tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

Dated: August 26, 2013

Residential Tenancy Branch

