



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 by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and extending the time for making that application. Both parties appeared and had an opportunity to be heard.

I heard evidence on the tenant's application for an extension of time only. I gave my decision orally in the hearing and advised the parties they would also be receiving written reasons.

Issue(s) to be Decided

Are there exceptional circumstances here that would allow the tenant to file her application disputing the notice to end tenancy after the time for doing so has expired?

Background and Evidence

The tenant testified that she received a 1 Month Notice to End Tenancy for Cause by personal service on August 10. She did not file this application for dispute resolution until September 17, 2013.

The tenant testified that she has a number of personal difficulties. In addition to depression she suffers from high blood pressure and appears to have some kind of blockage or aneurism. Since she received the notice to end tenancy she has had a CT scan and is scheduled for an angiogram tomorrow. She has not been hospitalized. Her partner is going into a three month rehab program on Saturday in an attempt to deal with his alcoholism. She testified that when she received the notice to end tenancy and saw the reasons stated on it she became very upset. She testified that she was very confused and panicked. She talked to her friend who suggested they go to the Residential Tenancy Branch.

The tenant's friend testified that she speaks to the tenant almost every day. She knew the tenant had been served with a notice to end tenancy and knew there was a procedure for tenants to dispute those notices. They had a discussion about the tenant's rights just a few days before they went to the Residential Tenancy Branch. The

tenant's friend testified that the tenant has not been herself recently; she seems to be confused which may be the result of a stroke.

The tenant did not file any medical reports or other evidence in advance of the hearing.

Analysis

The notice received by the tenant contained the following information:

- “You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.”

This information is summary of sections 47(4) and (5) of the *Residential Tenancy Act*. The notice also provides the telephone numbers and web site where additional information may be obtained.

Section 66(1) allows an arbitrator (formerly called a dispute resolution officer) to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy Guideline 26: Extending a Time Period*. The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- 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 relied on incorrect information from a friend or relative.

These examples pretty well sum up the tenant's evidence.

The tenant's evidence described the difficulties she is experiencing but none of them meet the standard of being exceptional circumstances within the meaning of the legislation. Accordingly, the tenant's application must be dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is

dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The tenant has paid the rent to the end of October. Accordingly, an order of possession effective 1:00 pm, October 31, 2013, is granted to the landlord.

Conclusion

- a. The tenant's application is dismissed.
- b. An order of possession has been granted to the landlord. If necessary, this 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: October 03, 2013

Residential Tenancy Branch

