



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing the tenant indicated he had not received any evidence from the landlord and the landlord's agent confirmed that she did not serve the tenant with any evidence. The landlord's agent also noted that she had not received any evidence or his Application for Dispute Resolution from the tenant until January 13, 2014.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a 1 Month Notice to End Tenancy for Cause and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act* (Act).

Background and Evidence

The parties agree the tenancy began on August 2013 as a month to month tenancy for a monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$275.00 paid.

The tenant submitted into evidence a copy of page 1 of a 1 Month Notice to End Tenancy for Cause naming the landlord's agent as the tenant dated December 1, 2013 with an effective vacancy date of January 1, 2014. During the hearing the parties agreed the notice cited the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has engaged in illegal activity that has or is likely to adversely

affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that she noticed immediately after serving the tenant that she had incorrectly named herself as the tenant and she re-issued the notice with the correctly named tenant and served it to the tenant within ½ hour of the first service.

The tenant originally testified that he had not received a second notice and then later changed his testimony to confirm that he had received the second notice naming him as the tenant.

The tenant submits that he received the Notice on December 1, 2013 and was unable to apply to dispute the notice by December 11, 2013 because he has a terminally illness and that he had been hospitalized on several dates in December. The tenant has provided confirmation that he attended and was released from the emergency room December 8, 9, and 17, 2013.

The tenant testified that even though he wasn't in hospital he had been very ill the entire month of December 2013. The tenant testified that the reason he was able to file his Application for Dispute Resolution on December 30, 2013 was that his advocate was available to give him a ride to do so.

The landlord testified that on November 18, 19, and 25 she called 911 as a result of disturbances being caused by the tenant and his guests. The landlord provided file numbers for each of these calls. The landlord provided no documentary evidence of these calls; their content; or the results of these calls. She did state that the police attended on each occasion and resolved the issues.

The tenant testified that he had not had any guests over that were causing any disturbances on any of those dates and that the police had never attended his rental unit on those dates.

The landlord testified that she had many letters of complaints from some of the other tenants regarding the tenant and his disturbances. She stated that some of these letters are undated; some from November 2013; and some from January 2014. The landlord did not submit any of these letters into evidence.

Analysis

Section 66 states the director may extend a limit established by the Act only in exceptional circumstances. Exceptional means, according to Residential Tenancy Policy Guideline 36, 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.

While I accept, based on his documentary evidence, that the tenant had attended the emergency room of his local hospital on two dates that were within the 10 days allowed for him to file his Application for Dispute Resolution, I find the tenant has failed to provide any evidence to confirm that he has been so ill as to not be able to submit his Application within the 10 days allowed.

In addition, I find that the tenant's explanation that he was able to submit his Application on December 30, 2013 because his advocate was available to give him a ride indicates that there was no reason he could not apply sooner than December 30, 2013 other than he needed a ride to do so.

Even if I were to allow the tenant some additional time due to his inability to apply because of his visits to the emergency room on December 8, 9, and 17 or any unconfirmed associated illness I find the tenant has provided no substantiated reasons to justify not applying until December 30, 2013 – 2 days before the effective date of the Notice.

For the reasons noted above, I dismiss the portion of the tenant's Application seeking more time to apply to cancel the 1 Month Notice to End Tenancy for Cause issued on December 1, 2013.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Despite only having a copy of the incorrect 1 Month Notice to End Tenancy for Cause that names the landlord's agent as the tenant as evidence, I accept, based on the testimony of both parties that the landlord served the tenant with a corrected Notice naming the tenant as the tenant with no other changes to the Notice.

Section 47(4) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 47 within 10 days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

As I have dismissed the portion of the tenant's seeking additional time to file his Application for Dispute Resolution to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on December 1, 2013 I find, pursuant to Section 47(5) that the tenant is conclusively presumed to have accepted the tenancy will end on the effective date of the Notice. I note that as such, I make no findings on whether or not the landlord has established cause to end the tenancy.

Conclusion

Based on the above, I order the tenancy to end in accordance with the corrected 1 Month Notice to End Tenancy for Cause issued by the landlord on December 1, 2013 and the tenant must vacate the rental unit.

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: February 18, 2014

Residential Tenancy Branch

