



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kalidaz Enterprises Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to cancel a Notice to End Tenancy and to cancel the One Month Notice to End Tenancy for cause.

The tenants and landlord's agent attended the conference call hearing and gave sworn testimony. The landlord provided evidence to the Residential Tenancy Office and the other party. All evidence and testimony of the parties has been reviewed and are considered in this decision

Issue(s) to be Decided

- Are the tenants entitled to more time to cancel the Notice to End Tenancy?
- If so are the tenants entitled to have the One Month Notice cancelled?

Background and Evidence

The parties agree that this tenancy started on May 01, 2013. The parties agree that the tenants were served with a One Month Notice to End Tenancy which was posted on the door of the tenants' rental unit on December 23, 2013. This Notice contained two reasons to end the tenancy. The tenants had 10 days to file an application to cancel the Notice as per the instructions given on page two of the Notice.

The tenants testify that they could not get out of the unit to file their application on time as it was too cold.

The landlord orally requests that the Notice is upheld and seeks an Order of Possession effective on February 28, 2014.

Analysis

I accept that the landlord served the tenants with a One Month Notice to End Tenancy on November 23, 2013. As this Notice was posted to the tenants' door it is deemed to have been served three days later on November 26, 2013 pursuant to s. 90 of the *Act*.

Therefore the tenants had 10 days from November 26, 2013 to file their application to dispute the One Month Notice. The tenants filed their application on December 13, 2013; 17 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 tenants 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. As the tenants have been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice to End Tenancy I must dismiss the tenants' 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 landlord's One Month Notice to End Tenancy and grant the landlord an Order of Possession effective on the date given on the Notice of December 31, 2013. As this date has since passed and the landlord has agreed to extend the date the tenants should vacate the unit to February 28, 2014. I have issued an Order of Possession for February 28, 2014.

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 February 28, 2014**. This Order must be served on the tenants 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: February 03, 2014

Residential Tenancy Branch

