



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF, MT

Introduction

This hearing dealt with applications from both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for cause and to recover her RTB filing fee. The landlord applied for an order of possession and to recover her RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the time be extended for the tenant to file her application for dispute resolution?
If not, is the landlord entitled to an order of possession?
If so, should the notice to end tenancy be cancelled?

Background and Evidence

The parties had a previous hearing on February 5, 2013 (File 803924). The parties settled the matters at issue in that hearing, and the settlement was recorded as a decision of the Arbitrator pursuant to Section 63. The settlement reads as follows:

1. The tenant agreed not to permit her daughter and her daughter's associates in and around the apartment building.
2. The tenant agreed to take action to ensure that the landlord does not receive threatening calls from the tenant's daughter and/or her associates.
3. The tenant understood and agreed that the keys to the apartment building were for her use only and were not to be given to any other person.
4. The landlord agreed to allow the tenancy to continue as per the above terms.
5. Both parties confirmed that they understood and agreed to the terms of this agreement.

The landlord gave evidence that she served the tenant personally with a Notice to End Tenancy for Cause (the “Notice”) on March 1, 2014. The tenant agrees the landlord served her personally on that date. The landlord did not specify one or more of the reasons for ending tenancy that are printed on page 2 of the Notice. Instead, the landlord wrote “see attached note” on page 2 of the Notice. In the attached note, the landlord asserts that the tenant breached the agreement made in the previous hearing, and the tenant’s breach caused a problem at the building.

The landlord’s position is that the tenant filed her application for dispute resolution after the 10-day deadline for doing so. The landlord requests an order of possession. Since the tenant has paid rent for the month of April 2014, the landlord agrees that the effective date of the order of possession may be April 30, 2014.

The tenant applied for dispute resolution on March 12, 2014. The tenant gave evidence that she has fallen three times this year, and suffers from severe arthritis in her knee and hip. The tenant’s evidence is that she has only left her building about three times in the last couple of months. Her evidence is that she did not file sooner because she has a difficult time getting around. The tenant’s evidence is that she uses a cane and is afraid of falling. She took transit from her home to the RTB office to file her application.

Analysis

According to Section 47(4) of the Act, a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

I find the tenant received the Notice on March 1, 2014 and she therefore had until the close of business on March 11, 2014 to file her application for dispute resolution. The tenant filed her application on March 12, 2014 which was after the statutory time limit for doing so.

Section 66(1) allows me to extend a time limit established by the Act only in exceptional circumstances. According to Residential Tenancy Policy Guideline 36 “Extending a Time Period”:

“The word “exceptional” means 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. 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.”

I accept that the tenant suffers from health problems including arthritis and is concerned about falling. However, it is not clear why the tenant was able to file her application on March 12th but was unable to file it on March 11th or earlier. The tenant did not provide any evidence that her health specifically prevented her from coming to the RTB office on March 3, 4, 5, 6, 7, 10, or 11. I find that the tenant has not established that exceptional circumstances existed between March 1 and March 12, 2014 that prevented her from filing her application within time. Since the tenant has not established any exceptional circumstances, I am unable to extend the time limit for the tenant to apply to dispute the Notice. The tenant’s application for an extension of time and to cancel the Notice is dismissed.

Since the tenant’s application to cancel the Notice is dismissed, the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is also entitled to recover her RTB filing fee of \$50.00. The landlord is entitled to deduct this amount from the tenant’s security deposit. The balance of the security deposit must be dealt with according to the process set out in Section 38 of the Act.

Conclusion

The tenant’s application is dismissed. I grant the landlord an order of possession. The landlord may retain \$50.00 from the tenant’s security deposit.

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: April 15, 2014

