



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, MNDC, OLC, RPP, LRE, OPC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord(s). Both files were heard together.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have put on their applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the tenants request to have a Notice to End Tenancy canceled, the landlords request to uphold a Notice to End Tenancy and issue an Order of Possession, and the request for recovery of the filing fee, and pursuant to Section 2.3 of the Rules of Procedure I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

On February 28, 2014 the landlord personally served the tenant with a one-month Notice to End Tenancy for cause.

The tenant filed a dispute of the Notice to End Tenancy on March 14, 2014.

The landlord has argued that:

- The Residential Tenancy Act requires that the tenant file a dispute of a one-month Notice to End Tenancy within 10 days of receiving that notice and in this case the tenant failed to do so.
- They therefore believe that the tenant's application to have the notice canceled should be dismissed for being outside the time limit and that an Order of Possession should be issued.

The tenants advocate argued that:

- It was their understanding that only business days can be counted in the 10 days in which they had to dispute the notice, and since there were two weekends over that timeframe, the final date to file a dispute was March 14, 2014.
- They therefore filed within the required 10 business day time frame.

Analysis

Sections 47(4) & 47(5) of the Residential Tenancy Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Residential Tenancy Act does not say within 10 business days, it simply states within 10 days and therefore the time would only be extended if the tenth day were to fall on a weekend or holiday.

In this case the 10 day fell on a Monday, and therefore the tenant was required to file a dispute of the notice by Monday, April 10, 2014.

Therefore as stated above, the tenant is conclusively deemed to have accepted that the tenancy ends on the effective date of the notice, and I will not cancel the Notice to End Tenancy.

Since I am not canceling the Notice to End Tenancy, I allow the landlords request for an Order of Possession. The landlord stated at the hearing that they are willing to allow the tenant to stay until May 31, 2014.

The tenant assured this hearing that she would vacate the rental unit on May 31, 2014.

I also allow the landlords request for recovery of the filing fee.

Conclusion

The tenant's application to cancel the one-month Notice to End Tenancy is dismissed without leave to reapply.

I have issued an Order of Possession for 1:00 p.m. on May 31, 2014.

I have allowed the landlords request for recovery of the \$50.00 filing fee and I therefore order that the landlord may retain \$50.00 of the tenants security deposit at the end of the tenancy.

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: May 06, 2014

Residential Tenancy Branch

