



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") and for an order granting more time to make an application to cancel a notice to end tenancy.

The tenant JA and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order granting more time to make an application to cancel a notice to end tenancy?

If so, are the tenants entitled to an order cancelling the Notice?

Background and Evidence

The undisputed evidence showed that this tenancy began on June 27, 2012 and monthly rent is \$800.

The landlord testified that he served the tenants a 2 Month Notice to End Tenancy for Landlord's Use of the Property by personal delivery to tenant JA on April 1, 2014, listing an effective move-out date of July 1, 2014.

The Notice informed the tenants that they had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

In response to my question, the tenant confirmed receiving the Notice, in that time frame of April 1, 2014. Although the tenant failed to give a specific date as to when he received the Notice, his application stated that he received the Notice on April 1, 2014.

I also note that the tenants' application mentioned that they realized they were past the deadline, "but only found this out on May 2/ 14." I asked the tenant what this statement meant, and he did not respond with a clear answer.

When I asked the tenant why he did not file his application in dispute of the Notice earlier, his response was that the landlord has given the tenants at least 3 other Notices.

Analysis

In the case before me, I find the evidence shows that the tenants received the landlord's 2 Month Notice on April 1, 2014, as confirmed by the tenants in their application, and therefore were required to file their application in dispute of the Notice by April 16, 2014; instead the tenants' application was made on May 6, 2014, and a corrected application was made on May 8, 2014.

In considering the tenants' request to grant additional time to dispute the landlord's Notice, section 66(1) of the *Residential Tenancy Act*, provides that an extension of time can only be granted where the applicant, the tenants in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times. The tenants offered no proof that this or other exceptional circumstances existed.

Instances where a party did not understand the legislation or didn't think the landlord was serious when he served the Notice are not exceptional circumstances.

Other criteria considered in granting an extension of time include whether the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party or the party has brought the application as soon as practical under the circumstances. I

do not find that to be the case here, as the tenant provided no explanation as to why they did not file their application within the 15 days.

I therefore find that the tenants have failed to prove that exceptional circumstances prevented them from filing their application within 15 days of having been served with the Notice, and I therefore dismiss their application for an extension of time.

As a result, due to the tenants' failure to make a timely application as required by the Act, I therefore dismiss the tenants' application to cancel the 2 Month Notice dated and issued April 1, 2014, as they are conclusively presumed to have accepted that the tenancy ends on July 1, 2014, the effective date of the notice to end tenancy.

I have not granted the landlord an order of possession for the rental unit as he failed to make that request at the hearing.

Conclusion

The tenants' application is dismissed, without leave to reapply.

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: June 18, 2014

Residential Tenancy Branch

