



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURR PROPERTIES LTD. nt name suppressed to protect privacy]

DECISION

Dispute Codes cnc, mt, rrp

Introduction

The tenant applies for an order for more time to make this application, and if granted, an order to cancel a one month Notice to End Tenancy.

Issue(s) to be decided

1. Should the tenant be allowed more time to make her application?
2. If so, is the notice valid to end the tenancy?

Background and Evidence

The tenant's application indicates that she received a Notice to End Tenancy on August 22, 2013. Her application includes a hand written letter dated September, 2014 that acknowledges that her application is late, and requests an extension. The letter states she has been sick with the flu, that she cannot go outside, and that her forms are being filed by a friend.

At the hearing, the tenant testified she received the Notice to End Tenancy in late August or early September. When asked why the application requested more time to file, she stated she has been through this process before and understood it, but that she needed time to write everything out, that she had to get signatures from others that took time to get, and that she had been sick.

The landlord confirms the eviction notice was served August 22, 2014, and is effective to end the tenancy September 30, 2014. He receives numerous complains about the tenant. He contends the tenant and her guests are causing a disturbance, and this has been ongoing for many years. There is ongoing smoke coming through her door which she leaves open. She refuses to close the door. She has threatened others. Friends of hers are causing damage to the premises, are sleeping in corridors, and are camping outdoors.

The tenant denies causing any disturbance or interfered with anyone. She states her door is open because it won't shut. She denies threatening anyone or blowing smoke in anyone's face. She acknowledges she knows the people that are camping out in the back yard, but denies she let them in.

Analysis

Section 47 of the Residential Tenancy Act deals with the issues related to a landlord's notices given to end the tenancy for cause (as is the case in this dispute). Subsection 47(4) provides that the time limit to dispute such notice is within 10 days after the date the tenant receives the notice. In this case I accept that the notice was served August 22, 2014. In that respect, I find that the landlord's testimony corresponds to the tenant's written statement filed as part of this hearing, and I prefer that testimony to the tenant's testimony that the notice may not have been received until September. I also consider the 2013 year on that written statement simply to be an error on the part of the tenant, as the letter was clearly relating to the notice received August 22, 2014.

A dispute of the notice should have been filed by September 2, 2014, but was filed later.

Section 47(5) provides that when a tenant does not dispute a notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date. Section 66 of the Residential Tenancy Act provides that I have the authority to extend or modify a time limit only in exceptional circumstances. I note that in this case the application is made prior to the effective ending of the tenancy, as the effective end of tenancy is correctly September 30, 2014.

Policy guideline 36 provides guidance over the process of time extensions, and states the following:

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.

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

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

There are a number of key factors that I have considered, in determining that exceptional circumstances do not exist in this case. Firstly, this was not the first time the tenant had disputed a notice by the landlord, and she acknowledges she understood the process. Secondly, she did not file an on-line application even though this could have been done from a remote location. Thirdly, it was not necessary for the tenant to get any signatures from others to file her dispute. If those signatures were part of her evidence, they could have been submitted later. Fourthly, there is no supporting medical evidence to verify that an illness prevented her from completing her application within the required time. Fifthly, the Guideline suggests that not feeling well is not an exceptional circumstance. Sixthly, no explanation was given as to why her friend could not have delivered documents to the tenancy office within the required period. Seventh, the tenant's testimony at the hearing was different than the information provided in writing, and in the absence of an understandable explanation for that inconsistency, the tenant's credibility and reliability is put into question.

In keeping with the policy guideline referred to above, these factors mitigate against a finding that exceptional circumstances exist, warranting no extension of the 10 day time limit. Accordingly, I dismiss the claim for an extension of time to make this application, and consequently dismiss the balance of the tenant's claim. I need not address the merits of the reasons for giving the notice, ending the tenancy. Section 47(5) of the Residential Tenancy Act applies, and the tenant is conclusively presumed to have accepted that the tenancy has ended September 30, 2014, (now extended to October 31, 2014, by virtue of the delay in hearing this matter).

Conclusion

The tenants' application is dismissed. The tenancy ends October 31, 2014.

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: October 24, 2014

Residential Tenancy Branch

