



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession. Both parties participated in the conference call hearing.

Issue to be Decided

Did the tenants file their application for dispute resolution within the required time limit and if not, are they entitled to an order permitting more time to file their application?

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenancy began on February 15, 2014 and that rent was set at \$600.00 payable in advance on the 15th day of each month. The parties further agreed that the landlord served on the tenants a 1 month notice to end tenancy (the "Notice") for cause, alleging that the tenants had repeatedly paid rent late, had significantly interfered with or unreasonably disturbed the landlord and had put the landlord's property at significant risk.

The tenants applied for dispute resolution on February 16, 2015 and on their application for dispute resolution, they indicated that they had received the Notice on February 5, 2015. At the hearing, the landlord testified that she personally served the tenants with the Notice on February 1. The female tenant initially agreed that she had received the Notice on February 1 but then stated that she must have received it on February 5. The male tenant insisted that they found the Notice posted to their door on February 5. The tenants applied for more time to file their application for dispute resolution.

The parties agreed that although the rent is due on the 15 day of each month, the tenants have never paid rent on time, usually paying after the first day of the following month. The tenants claimed that they paid late because they did not receive their income until the end of the month.

Both parties offered testimony about the other grounds for the Notice, but it is unnecessary for me to record the parties' testimony around those grounds for reasons I have outlined below.

Analysis

I will first address the tenants' application for more time to dispute the Notice. Section 47(4) of the Act provides that if tenants intend to dispute a Notice, they must file their dispute within 10 days of the date the Notice is received. Section 47(5) provides that if tenants do not file for dispute within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit on the effective date. This means that if the tenants received the Notice on February 1 as is claimed by the landlord, because they did not file their application for dispute resolution until February 16, they did not file within 10 days and the conclusive presumption operates to end their tenancy. If the tenants did not receive the Notice until February 5, February 16 would have been their last day to file their application. Although February 16 is 11 days after they received the Notice, the 10th day fell on a Sunday when the Residential Tenancy Office is closed and section 25(3) of the *Interpretation Act* operates to extend the deadline until the next day that the office is open.

The female tenant initially stated that she had received the Notice on February 1, the same day the landlord claimed to have served it. She did not change her mind on which date she received the Notice until she learned that she had filed her application for dispute resolution late. By contrast, the landlord did not waiver in her testimony and adamantly held that she personally served the Notice on February 1. She also gave details about who was present when she served the Notice. Because the tenants were inconsistent in their testimony and because the tenants applied for more time to file their application, I find it more likely than not that the tenants are incorrect in their recollection of when they received the Notice and I find that the tenants received the Notice on February 1 as alleged by the landlord. The tenants claimed that they delayed in filing their application because the first time they attended at the Residential Tenancy Branch office, they did not have the proof required to obtain a fee waiver so they had to return with the proper documentation. Section 66(3) of the Act permits me to grant parties an extension of time only where there are exceptional circumstances. I find that the circumstances described by the tenants cannot be characterized as exceptional and I decline to grant an extension of time to file their application.

I have found that the tenants failed to file their application within the prescribed timeframe and pursuant to section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. For that reason, I would dismiss their application for dispute resolution and decline to set aside the Notice. However, in the event that I am wrong and should have found that the tenants were either entitled to an extension of time or that they disputed the Notice within 10 days of receipt, I would have dismissed their application for dispute resolution in any event for the following reasons.

The tenants agreed that the tenancy agreement required that they pay rent on the 15th day of each month but testified that they did not pay rent when it was due because they did not have money until the end of the month. The tenants are contractually bound to comply with the terms of the tenancy agreement unless the landlord has waived the requirement for compliance. In this case, the landlord was clear that she required payment when it was due under the agreement. Residential Tenancy Policy Guideline #38 provides that 3 late payments is sufficient to give cause to the landlord to end the tenancy. I find that the tenants have paid rent late for each month of the tenancy and that the landlord therefore has grounds to end the tenancy.

As I have found that the landlord has established grounds to end the tenancy for repeated late payment of rent, it is unnecessary for me to address the other grounds listed on the Notice.

I dismiss the tenants' application for dispute resolution and grant the landlord an order of possession. As the hearing addressing this matter did not take place until just a few weeks before the March 31 effective date of the Notice, I find it appropriate to exercise my discretion under section 68(2) of the Act and make the order effective April 30, 2015. The tenants must pay rent throughout the last month of the tenancy. The tenants must be served with the order. Should they fail to comply, it may be filed in the Supreme Court for enforcement.

Because the tenants disputed the Notice, it was not necessary for the landlord to file an application for an order of possession as she could have verbally requested an order when she appeared at the hearing scheduled for the tenants. For that reason, I decline to award the filing fee to the landlord.

Conclusion

The tenants' application is dismissed and the landlord is granted an order of possession.

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: March 17, 2015

Residential Tenancy Branch

