



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HILLTOP MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy and for an Order to cancel a One Month Notice to End Tenancy for cause.

The tenant's agent and the landlord and his witness attended the conference call hearing and gave sworn testimony. The tenant provided a copy of the One Month Notice in documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. The landlord argued that they did not receive the tenant's hearing package until two days before the hearing. The landlord argued that the post mark on the registered mail was dated June 24, 2015. When a registered mail is sent it is deemed served five days after sending, therefore the landlord would be deemed to have received it on June 29, 2015 within the 10 days' time frame. Consequently the hearing continued.

Preliminary Issues

At the outset of the hearing the tenant's agent identified herself as the tenant when in fact the tenant's agent is actually a family member. I cautioned the tenant's agent that she must correctly identify herself for this proceeding as this is a legal proceeding and all parties must be identified and take an oath to tell the truth. The tenant's agent testified that the tenants speak English as a second language and do not understand English well. The tenant entered into the hearing and stated that LD is his sister in law.

It was clear that the tenant did not understand questions put to him in English and the hearing proceeded with his agent.

Issue(s) to be Decided

- Are the tenants entitled to more time to file an application to cancel a Notice to End Tenancy?
- If so are the tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2011. Rent for this unit is \$725.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on May 26, 2015 by registered mail. The tenant's agent confirmed that this was received by the tenants on May 28, 2015. The Notice contained six reasons to end the tenancy. The tenants had 10 days to file an application to cancel the Notice as per the instructions given on page two of the Notice. The Notice has an effective date of June 30, 2015

The tenant's agent testified that the tenant received the Notice while the tenant's agent was out of the country and as the tenant speaks and understand limited English they did not know they had to file an application to cancel the Notice. When the tenant's agent returned she told the tenant that he must cancel the Notice and the tenant filed his application on June 12, 2015.

The landlord orally requests that the Notice is upheld and seeks an Order of Possession effective two days after service upon the tenants.

Analysis

I accept that the landlord served the tenant with a One Month Notice to End Tenancy on May 26, 2015 by registered mail. The tenant's agent has testified that the tenants received this Notice on May 28, 2015. Therefore the tenants had 10 days from May 28, 2015 to June 07, 2015 to file an application to dispute the Notice. As June 07, 2015 fell on a day of the week that the Residential Tenancy Office was not open the tenants had an extra day until June 08, 2015 to file their application to dispute the Notice. The tenants filed their application on June 12, 2015 which was 14 days after being deemed to have received the Notice.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 66(1) of the *Residential Tenancy Act* states:

Director's orders: changing time limits, and provides in part as follows:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [starting proceedings] or 81(4) [decision on application for review].

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a dispute resolution officer 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.

Consequently, I find that the reasons provided by the tenant's agent for the late filing of their application, do not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. If the tenants did not understand the Notice they should have sought assistance from someone who could explain it to them or the landlord for an explanation. As the tenants have been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice I must dismiss the tenant's application to set aside the Notice.

As the landlord has requested an Order of Possession at this hearing I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)*:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

On the basis of this, I uphold the Notice and grant the landlord an Order of Possession. As the effective date of the Notice has since passed I have issued an Order of Possession effective two days after service upon the tenants.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause dated May 26, 2015 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days (2) after service upon the tenant**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: July 10, 2015

Residential Tenancy Branch

