



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled more time to submit their Application for Dispute Resolution seeking to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on December 6, 2009 as a month to month tenancy for the current monthly rent of \$700.00 due on the 1st of each month with a security deposit paid. The parties disagreed as to the amount of the security deposit: the tenants stated it was \$350.00; the landlord stated the deposit was \$337.50.

The tenants submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on April 1, 2015 with an effective vacancy date of May 31, 2015 citing the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and the tenant has caused extraordinary damage to the unit or property. The Notice stated the tenants had 10 days to file an Application for Dispute Resolution if they wanted to dispute the Notice.

The tenants submitted that they did not file their Application for Dispute Resolution to seek to cancel the Notice within the 10 days required because the landlord served the

Notice by sliding it under the door. The tenants submit that when they read the Landlord's and Tenant's Guide to the Residential Tenancy Act she determined that because the landlord used this method of service the Notice was not valid so they did not submit an Application.

The tenants submitted that they did file their Application for Dispute Resolution on May 26, 2015 because the landlord had turned off the hot water. The tenants also stated that they did not apply because they had no way of getting to Service BC in order to apply and that they had to seek assistance from a local charity to get there. They did not provide any explanation as to why they could not obtain this assistance within 10 days of receiving the Notice.

Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

As the tenants have provided no reasons that could be considered strong or compelling as to why they did not file an Application for Dispute Resolution within 10 Days of receiving the Notice. As such, I find the tenants are not entitled to additional time to submit their Application.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, or
- c) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

As I have found the tenants are not entitled to additional time to file their Application for Dispute Resolution to dispute the 1 Month Notice issued on April 1, 2015, I find the tenants have, in fact, failed to submit an Application for Dispute Resolution to dispute

the 1 Month Notice in accordance with Section 47(4) within 10 days of receiving the Notice. As a result, I find, pursuant to Section 47(5) of the *Act*, the tenants have accepted the end of the tenancy and they must vacate the rental unit.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety 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: July 14, 2015

Residential Tenancy Branch

