



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekinow Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

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 an agent for 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 to more time to apply to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 66, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on October 24, 2012 for a month to month tenancy beginning on November 1, 2012 for the monthly economic rent of \$1,598.00 due on the 1st day of each month with a security deposit of \$500.00 paid.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 10, 2015 with an effective vacancy date of July 31, 2015 citing the tenants are in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice issued states, on the 2nd page the following:

"You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

An arbitrator may extend your time to file your Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner).”

The tenants submit that they received the 1 Month Notice to End Tenancy for Cause on June 10, 2015. The tenants submitted their Application for Dispute Resolution seeking to cancel the Notice to End Tenancy on June 24, 2015.

The tenants submit that they waited to submit their Application until June 24, 2015 because it they had been trying to contact their lawyer, which took about 10 days, and then it took them several days to be able to get to the Residential Tenancy Branch.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

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.

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.

I find the tenant’s submission that they did not file their Application within 10 days because they could not contact their lawyer is not an exceptional circumstance. The tenants provided no explanation as to why they needed to contact their lawyer prior to submitting their Application for Dispute Resolution.

Further, their testimony that it then took them several days to get to the Residential Tenancy Branch provides no explanation or evidence of any exceptional circumstance that prevented them from filing their Application within the required 10 Days.

I find the tenants have failed to provide any evidence of a strong or compelling reason to extend the 10 day timeframe and I therefore dismiss that portion of their Application seeking more time to apply to cancel the 1 Month Notice to End Tenancy for Cause.

As a result, I find the tenants have failed to apply to cancel the 1 Month Notice in accordance with Section 47(4) and pursuant to Section 47(5) the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. I therefore, make no findings of fact or law regarding the grounds for the issuance of the 1 Month Notice to End Tenancy for Cause.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: August 21, 2015

Residential Tenancy Branch

