



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to cancel a Notice to End Tenancy.

The Tenant stated that on July 16, 2015 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy that was submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant was unable to cite a Canada Post tracking number that corroborates this statement and he did not submit a Canada Post receipt that corroborates this statement.

The Tenant stated that on July 15, 2015 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy that was submitted to the Residential Tenancy Branch were personally served to the Landlord's husband, who acts on behalf of the Landlord in regards to this tenancy.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(1)(b) of the Residential Tenancy Act (*Act*); however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy and, if so, should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Tenant stated that on June 24, 2015 he first received the One Month Notice to End Tenancy for Cause, dated June 17, 2015. He stated that he received one copy of the Notice to End Tenancy by mail and one copy via email.

The Tenant filed his application to dispute this Notice to End Tenancy on July 13, 2015, which he believes is within the legislated time period for disputing a One Month Notice to End Tenancy. He stated that he did not dispute the Notice earlier because he was trying to resolve the issue with the Landlord prior to involving the Residential Tenancy Branch.

The Tenant stated that the One Month Notice he received is not signed by the Landlord, although her name is typed onto the documents in two locations.

The One Month Notice to End Tenancy, which was submitted in evidence, declares that the Landlord is attempting to end this tenancy because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Tenant acknowledges playing his music loudly on one occasion, which he does not believe justifies the end of his tenancy.

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons by providing a tenant with a notice to end tenancy that complies with section 52 of the *Act*.

Section 47(4) of the *Act* stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(4) of the *Act* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must vacate the rental unit by that date.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant received the One Month Notice to End Tenancy, dated June 17, 2015, on June 24, 2015. The evidence shows that the Tenant did not file his Application for Dispute Resolution until July 13, 2015. As this is more than 10 days after he received the Notice to End Tenancy, I find that the Tenant did not file his Application for Dispute Resolution within the timeline established by section 47(4) of the *Act*.

Section 66(1) of the *Act* authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice.

I find that the reasons provided by the Tenant for not disputing the Notice to End

Tenancy within 10 days of receiving it are neither strong nor compelling. In my view, communicating with the Landlord regarding the Notice to End Tenancy that was served do not constitute exceptional circumstances and I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice. On the basis of the undisputed evidence and the Notice to End Tenancy that was submitted in evidence, I find that the One Month Notice to End Tenancy that was served to the Tenant was not signed by the Landlord. I therefore find, pursuant to section 52(a) of the *Act*, that the Notice to End Tenancy that is the subject of this dispute is not effective.

As the Notice to End Tenancy that is the subject of this dispute is not an effective notice, I grant the Tenant's application to set aside the One Month Notice to End Tenancy dated June 17, 2015.

Conclusion

The One Month Notice to End Tenancy that is the subject of this dispute is set aside. The tenancy shall continue until it is ended in accordance with the *Act*.

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: September 15, 2015

Residential Tenancy Branch

