



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENDALL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 9, 2015 to cancel a notice to end tenancy for repeatedly late payment of rent.

An agent for the Landlord appeared for the hearing and provided affirmed testimony. After 20 minutes of the hearing and just before the hearing was about to conclude, the Tenant and her advocate appeared for the hearing late. The advocate explained that they had got distracted and this was the reasons for the delay. In the interest of natural and fair justice, I gave the Tenant and her advocate an opportunity to present the Application. As a result, they both provided affirmed testimony.

Preliminary Issues

The Tenant confirmed that he had received a 1 Month Notice to End Tenancy for Cause (the “Notice”) on August 28, 2015, which was also verified on the Tenant’s Application. Section 47(4) of the *Residential Tenancy Act* (the “Act”) provides that a tenant has 10 days to make an Application to dispute a Notice.

Therefore, taking into account that the 10 day time limit of September 7, 2015 fell on a statutory holiday, the Tenant would have had until September 8, 2015 to make his Application to dispute the Notice. However, the Tenant did not make the Application until September 9, 2015.

The Tenant was asked about the reasons for this and testified that he had a medical emergency on September 8, 2015 which prevented him from making the Application. However, the Tenant provided no supporting evidence or medical documents to back this claim. Furthermore, the Landlord’s agent protested that the Tenant should not be allowed to give any evidence as they had appeared late for the hearing.

Section 66 of the Act allows an Arbitrator to extend the time limit imposed by the Act only in exceptional circumstances. However, in this case, I find the Tenant failed to provide sufficient evidence that exceptional circumstances existed that prevented the Tenant from making his Application within the time limits imposed by the Act.

Section 47(5) of the Act states that if a tenant fails to make an Application pursuant to the time limits set by Section 47(4) of the Act, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit by the date on the Notice. I have examined the Notice and I find the contents and the form used by the Landlord comply with Section 52 of the Act.

Furthermore, the Tenant testified that he had a third party paying rent on his behalf who had failed to pay this to the previous Landlord from October 2014 to June 2015 and that he was in rental arrears in the amount of \$10,000.00. However, the Tenant was in the process of recovering this money from that third party. The Tenant confirmed that he had paid rent for July 2015 on July 14, 2015 and that he had paid rent for September and October 2015 on time.

Before I continued to hear any further evidence in relation to this dispute, I offered the parties an opportunity to settle this matter through mutual agreement. The Tenant was willing to offer the Landlord increased rent to settle the outstanding rental arrears to continue the tenancy. However, the Landlord did not want to pursue this option but was willing to mutually agree to end the tenancy that would give the Tenant sufficient time to vacate the rental unit.

The parties discussed the offer, turned their minds to compromise and decided to end the tenancy mutually on November 30, 2015 at 1:00 p.m. This is contingent on the Tenant paying rent for November 2015 and the Landlord being issued with an Order of Possession for this date. This order may be enforced only if the Tenant fails to vacate the rental suite by the agreed date. Copies of this order are attached to the Landlord's copy of this decision.

The parties also informed me that they were currently involved in another dispute (the file number for which appears on the front page of this Decision) where the Tenant had applied to cancel a notice to end tenancy for unpaid rent. That matter was still waiting for a decision to be rendered on. However, as the parties agreed to mutually end the tenancy, the parties agreed that matter is now a moot issue. The parties were informed that this information would be provided to the Arbitrator who had conduct of the previous dispute.

The parties confirmed the voluntary nature of this agreement both during and at the conclusion of the hearing.

Conclusion

The Tenant's Application to cancel the Notice is dismissed because the parties mutually agreed to end the tenancy on November 30, 2015.

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: October 20, 2015

Residential Tenancy Branch

