



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF (Landlord's Application)
 CNC, MT (Tenant's Application)

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on September 23, 2015 to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), and for more time to cancel the Notice. The Landlord applied on September 28, 2015 for an Order of Possession and to recover the filing fee from the Tenant.

The Tenant and Landlord appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Applications. The hearing process was explained and the parties had no questions of the proceedings.

Preliminary Issues and Analysis

At the start of the hearing, the Landlord testified that his son had personally served the Tenant with the Notice on September 11, 2015. The Notice was provided into evidence which detailed a vacancy date of October 31, 2015. I determined that the Notice on the approved form complied with Section 52 of the Act.

The Tenant confirmed receipt of the Notice on the same day. Therefore, the Tenant would have had until September 21, 2015 to dispute the Notice within the time limit set by Section 47(4) of the Act. However, the Tenant did not make his Application to dispute the Notice until September 23, 2015. The Tenant applied for more time to cancel the Notice on his Application. Section 66(1) of the Act allows an Arbitrator to extend a time limit established by the Act only in exceptional circumstances.

The Tenant was asked about the reason why he had applied outside of the 10 day time limit to dispute the Notice. The Tenant testified that he did not read the Notice properly and by the time he did it was over the 10 day time limit. The Tenant stated that he was sick at the time but provided no supporting evidence of this. The Tenant acknowledged

that his reasons for applying outside of the time limit were not due to exceptional circumstances.

Based on the dates provided by both parties, I determined that the Tenant had failed to dispute the Notice within the time limits imposed by the Act. The Tenant failed to provide sufficient evidence as to exceptional circumstances that prevented him from applying to dispute the Notice within the time limits set by the Act. I find that a failure to read the Notice is not evidence of exceptional circumstances.

The Tenant was informed of the provisions set out by Section 47(5) of the Act which provide that if the Tenant fails to dispute the Notice within the time limits set by Section 47(4) of the Act, then the Tenant is conclusively presumed to have accepted the vacancy date on the Notice and must vacate the rental suite by this date.

However, the Landlord was willing to give the Tenant more time to vacate the rental unit if the Tenant ensured that no further incidents or disturbances would take place during the tenancy and that the Tenant communicated and co-operated with the Landlord in exercising his rights in this tenancy, which was the reason for the Notice.

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties discussed the issues, turned their minds to compromise and decided to mutually agree to end the tenancy. The Landlord withdrew the Notice and the parties agreed that this tenancy would end at 1:00 p.m. on March 31, 2015. The Landlord is issued with an Order of Possession effective for this date. This order may be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite on this date and time.

However, this agreement does not affect the rights and remedies of the parties under the Act to end the tenancy earlier if there are breaches of the Act, such as a failure to pay rent or the issuing of another notice to end tenancy. The parties understood and confirmed the voluntary nature of this agreement.

Based on the foregoing, I find the Landlord is entitled to recover the filing fee he paid for this hearing. Pursuant to Section 72(2) (b) of the Act, the Landlord may deduct \$50.00 from the Tenant's security deposit at the end of the tenancy.

Conclusion

The Landlord withdrew the Notice dated September 11, 2015. The parties mutually agreed to end the tenancy on March 31, 2016 at 1:00 p.m. The Landlord is issued with an Order of Possession effective for this date. The Landlord may recover his filing fee from the Tenant's security deposit.

The Tenant's Application is dismissed.

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 29, 2015

Residential Tenancy Branch

