



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issues to be Decided

Did the tenants file their application to dispute the notice to end tenancy within the required timeframe?

If not, are the tenants entitled to an extension of time to file their application?

If the tenants are entitled to an extension of time, should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on September 14, 2015, the landlord served on the tenants a 10 day notice to end tenancy for cause (the "Notice"). Although the tenants' application to dispute the Notice is dated September 24, 2015, their application to waive the \$50.00 filing fee which is required to file the application was not approved until September 25, 2015, which is the date the application was accepted by the Residential Tenancy Branch.

Analysis

I find that the tenants filed their application on September 25, 2015. Section 47(4) of the Act provides that tenants who receive this type of a notice to end tenancy have 10 days to dispute the Notice, which means that September 24 would have been the last day on which the tenants could have filed their application to dispute the Notice. Section 47(6) provides that when tenants fail to file an application to dispute the Notice within the 10 day timeframe, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 66(1) permits me to extend time limits where the applicants have proven that exceptional circumstances prevented them from complying with the statutorily imposed time limit.

In this case, the tenants did not request an extension of time to file their application, either on their written application for dispute resolution or orally at the hearing. They stated that the female tenant had been hospitalized for 3 weeks beginning on September 3, although they also testified that she had been discharged from the hospital on September 14. They claimed that she was not strong enough to go to the access centre to file the application for a fee waiver and they required her to be present and present ID before approving the fee waiver application so the male tenant was unable to file the application on her behalf.

Because the tenants did not request an extension of time, I am unable to exercise my discretion under section 66 to grant them that extension. However, even if they had requested an extension, I am not persuaded that the circumstances described by the tenants can be characterized as exceptional. I accept that the female tenant could not have filed an application while hospitalized, it appears that she was released from the hospital as early as September 14 and there is no evidence such as doctor's note to corroborate their claim that she was physically unable to attend at the access centre to file her application for dispute resolution prior to September 25.

I find that the tenants failed to file their application to dispute the Notice within the required timeframe and I am unable to grant an extension of time to file the application and therefore they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I therefore decline to set aside the Notice and I dismiss the application. I have not considered the application on its merits.

The landlord acknowledged having received December's rent from the tenant. There is no indication that the tenants were ever of the impression that this payment reinstated their tenancy as the landlord has been persistent in pursuing an end to the tenancy. I find that as the effective date of the Notice has long since passed, the tenancy should end on December 31, 2015.

The landlord did not request an order of possession at the hearing and therefore no order is issued.

Conclusion

The application is dismissed and the tenancy will end December 31, 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: November 30, 2015

