



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DRS. FARNAN AND O'DRISCOLL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave undisputed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail. The landlord stated that no documentary evidence was submitted by the landlord. Based upon the above, both parties are deemed to have been properly served as per section 90 of the Act.

Preliminary Issue

The tenant has applied for more time to make an application to cancel a 1 Month Notice. The tenant stated that the 1 Month Notice dated September 4, 2015 was served on September 4, 2015 by email. The landlord confirmed service of the 1 Month Notice in this manner. The tenant filed an application for dispute on October 20, 2015. The tenant stated that he was not aware of the law and did not read the 1 Month Notice.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
- a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

As such, the tenant’s request for more time is denied. No exceptional reasons were provided for the 46 day delay before filing an application.

Pursuant to section 63 of the Act, an 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. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The tenant agreed to withdraw his application.
2. The landlord agreed to cancel the 1 Month Notice dated September 4, 2015.
3. The tenant agreed to pay the landlord \$200.00 for the Strata Bylaw Fine.

The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties.

Conclusion

The tenants' application is withdrawn. The landlord's 1 Month Notice is cancelled.
The tenant agreed to pay the landlord \$200.00 for the Strata Bylaw Fine.
As the matter was resolved through Mediation and not Arbitration, I decline to make any order regarding the tenant's recovery of the filing fee.

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: December 16, 2015

Residential Tenancy Branch

