



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the “Act”), to allow a tenant more time to make an application to cancel a Notice to End Tenancy, to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property issued on July 19, 2015 and to cancel a second 2 Month Notice to End Tenancy for Landlord’s Use of Property issued on October 26, 2015.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Procedural matter

The first matter that I must determine is whether to allow the tenant more time to make an application to cancel a Notice to End Tenancy that was received on July 19, 2015.

Under section 66 of the Act an Arbitrator may extend a time limit established under the Act only in exceptional circumstances, such as a medical emergency. The Arbitrator must not extend the time limit to make an application for dispute resolution beyond the effective date of the Notice.

The tenant received the 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”), issued on July 17, 2015. The tenant was required to file an application to dispute the Notice within 15 days after it was received. The tenant filed their application for dispute resolution on September 30, 2015, which is the effective date of the Notice.

The tenant testified that they did not file an application to dispute the Notice within the time limit because they did not read that portion of the Notice. The tenant stated that in any event they had planned to move; however, their new rental accommodation was no longer available so they then waited until September 30, 2015, to dispute the Notice.

An extension of time can only be granted where the applicant has established that there are exceptional circumstances. I find that the tenant's action is an abuse of the process as no exceptional circumstance occurred and they waited until the effective date of the Notice to file an application for dispute resolution. This delay caused the landlord hardship as the landlord was required to find temporary housing and was required to place their belongings in a storage facility until this matter was scheduled to be heard.

Further, I find the Act does not allow an extension of time, as any extension given would be beyond the effective date of the notice. I find the tenancy legally ended on September 30, 2015, and the tenant is now overholding the premises. Therefore, I dismiss the tenant's application to allow more time to make an application to cancel a Notice to End Tenancy.

As the tenancy legally ended on September 30, 2015, I find it is not necessary to consider the subsequent notice issued on October 26, 2015.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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 01, 2015

