Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CUSTOM REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnc, ff, mt

Introduction
In this Review Hearing, the tenant applies for an order for more time to make this application disputing the ending of the tenancy, and if granted, an order to cancel a one month Notice to End Tenancy, plus recovery of the tenant's filing fee. Both parties attended the hearing, and testimony was heard from both parties.

Issue(s) to be decided

1. Should the tenant be allowed more time to make his application?
2. If so, is the notice valid to end the tenancy, or should the tenancy continue?
3. Is the landlord entitled to an Order of Possession?

Background and Evidence
This tenancy began March 1, 2013. Monthly rent is $850.00, due on the first of each month. A security deposit of $425.00 was paid.

Based upon the landlord's testimony and evidence, and upon the confirming testimony by the tenant, I accept that on July 23, 2015 the tenant received a warning notice from the landlord that he was in breach of his tenancy agreement as a result of smoking in the building. On September 18, 2015, the tenant received a One Month Notice to End Tenancy, which was premised upon another alleged incident of smoking in the premises (which second incident is disputed by the tenant).

On October 5, 2015 the tenant filed his application, requesting an extension of time to make the claim, and requesting an order to cancel the Notice. The tenant did not attend the originally scheduled hearing of his claim, and the landlord was issued an Order of Possession. Subsequently, in a Review Consideration Decision made December 7, 2015, the Order of Possession was suspended, pending the outcome of this Review Hearing.

The landlord raised, as a preliminary issue at this Review hearing, that she had not been properly served with notice of this hearing, but had found out about it in conversation at the Residential Tenancy office. The landlord, however, consented to the hearing proceeding rather than face the prospect of further delay.

In terms of the issue of the request for more time to file his application, the tenant testified that when first served the 10 day Notice to End, he had opportunity to review it. Later he left the papers on the counter and spilled water on them. He then requested another copy from the landlord, but did not actually make contact until September 29, 2015. He filed his dispute October 5, 2015. When asked why he did not file his claim earlier, he testified that he didn't know the tenancy branch even existed.

Analysis

I accept that the subject One Month Notice was handed to the tenant on September 18, 2015, a date not disputed by the tenant. The tenant's application was not filed until October 5, 2015 however, a date well beyond the allowable 10 date time limit. The first issue I must address is whether there should be an extension to the allowable time to file the dispute.

Section 47 of the *Residential Tenancy Act* deals with issues related to one month notices given to tenants by landlords to end the tenancy for cause. Subsection 47(4) provides that the time limit to dispute such notice is within 10 days after the date the tenant receives the notice. Section 47(5) provides that when a tenant does not dispute a notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date. Despite section 47(5), section 66 of the *Residential Tenancy Act,* provides that I have the authority to extend or modify a time limit, in exceptional circumstances. I note that in this case the application was made prior to the effective end date the tenancy, given that the tenant received the notice September 18, 2015, the effective end of tenancy was October 31, 2015. Given that this hearing is not occurring until February 22, 2016, and given that rent has been paid for the month of February, that effective end of tenancy date is now extended further to February 29, 2016.

Policy guideline 36 provides guidance over the process of time extensions, and states that 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 by the time required must be very strong and compelling. Conversely, some specific examples in the guideline of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative.

I have considered the tenant's reasons for late filing. Firstly he submits he was waiting for the landlord to provide a fresh copy of the notice, after he spilled water on it. This is not a compelling or exceptional circumstance. The tenant had already received the earlier breach letter from the landlord, which specifically stated that failure to comply would result in a one

month Notice being served upon him. In other words, he was aware that the continuation of his tenancy was at risk. He admitted having viewed the One Month Notice before the water spilled on it, and therefore had to have known it related to the ending of his tenancy. The document specified the time frame in which to dispute the document. He did not require a fresh copy of the notice in order to file his claim to dispute it, or to receive more information about it. He could have gone online to do so, could have arranged for a friend to help him file a dispute or provide him information as to that process, could have phoned the tenancy office, or travelled there to file his dispute of the notice.

Secondly, the tenant alleges he did not know the tenancy office existed. This is hard to believe, given that he entered into a written tenancy agreement with a commercial landlord, which would have included references to the residential tenancy office in the context of enforcement of the agreement. Even more significantly, this is clearly an argument to the effect that the tenant did not know the applicable law or procedure, one which the policy guideline specifically clarifies is not an exceptional circumstance.

I therefore conclude that exceptional circumstances are not proven in this case, and accordingly must dismiss the tenant's claim for an extension of time to dispute the Notice. I therefore need not address the merits of the landlord's reasons for giving the notice and ending the tenancy, as section 47(5) of the Residential Tenancy Act provides that the tenant is conclusively presumed to have accepted that the tenancy has ended October 31, 2015 (as subsequently extended to February 29, 2016 by virtue of these hearings, and the payment of occupation rent). This tenancy shall end February 29, 2016.

The tenant's dispute of the subject Notice is dismissed, and the landlord is entitled to an Order of Possession, pursuant to sections 48 of the Residential Tenancy Act.

Conclusion

The tenant's application is dismissed in full, including his claim to recover his filing fee. The landlord is granted an Order of Possession, effective February 29, 2016.

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: February 22, 2016

Residential Tenancy Branch