



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

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 and to cancel a 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on January 26, 2016.

Preliminary matter

The first issue to determine is whether the tenant should be allowed more time to make an application to cancel a Notice to end tenancy.

Section 66 of the *Act* allows the Director to extend the time limit to file an application only in exceptional circumstances.

Exceptional circumstances include such issues as the party had been incapacitated due hospitalization or some catastrophic event that has prevented the party from submitting an Application for Review.

For an application to be accepted after the time limit, the applicant must show they:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

The tenant acknowledged that they received the Notice on January 26, 2016. The tenant had 10 days after the Notice was received to file their application for dispute resolution. I find the last day the tenant had to file their application was February 5, 2016. The tenant's application was filed on February 10, 2016, which is outside the time period permitted under the Act.

The tenant testified that they were admitted to the hospital on February 3, 2015, as that was the date their doctor had arranged for surgery. The tenant stated that they did receive prior notice of the schedule date.

In this case, the tenant had prior knowledge of the date they were to be admitted to the hospital. I find the tenant did not take reasonable steps to ensure their application was filed on time, as it was within the tenants control to file their application prior to the know admittance date. Therefore, I dismiss the tenant's application for more time to dispute a notice to end tenancy.

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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice

In this case, the landlord agreed to extend the effective date in the Notice to March 31, 2016.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective on March 31, 2016, at 1:00 pm. A copy of this Order must be served 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.

At the hearing the parties agreed that the landlord's application for an order of possession scheduled for March 31, 2016, is no longer required as the landlord was granted an order at today's hearing. Therefore, the hearing scheduled for March 31, 2016, is cancelled. The file number is noted on the covering page of this decision.

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: March 23, 2016

Residential Tenancy Branch