



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to allow a tenant more time to make an application to cancel a notice to end tenancy and to cancel a 2 Month Notice to End Tenancy for Landlord's Use.

On August 9, 2016, this matter was scheduled and adjourned due to insufficient time. An interim decision was made which should be read in conjunction with this decision.

The landlord's agent and Tenant RO appeared, gave 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

As the parties were unable to reach a settlement at the last hearing or during the adjournment period, I find the first issue that I must consider is whether or not to grant the tenants more time to make an application to cancel a Notice to End Tenancy.

The tenants' acknowledged that they received the notice to end tenancy on May 31, 2016. Under section 49(8) of the Act, the tenants had 15 days after it was received to file their application for dispute, which was June 15, 2016. Under section 49(9) of the Act if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant's application was not filed until June 21, 2016, which is outside the time limited permitted under the Act. The tenants' applied for more time to be allowed to dispute the notice to end tenancy.

Under exceptional circumstances, Section 66 of the Act allows the Director to extend the time limit for a review sought under Section 59 (3) of the Act. Exceptional circumstances include such issues as the party had been incapacitated due to hospitalization or some catastrophic event that has prevented the party from submitting an Application for Dispute Resolution.

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

1. 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;
2. had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
3. brought forward their application as soon as was practical, under the circumstances.

The advocate stated that as soon as they became aware of the notice to end tenancy they filed the application on behalf of the tenants. The advocate stated that they do not know what steps were taken by the tenants to file their application on time; however, the delay was likely due to the tenants' health and disabilities and there are little resources or supports within the communities.

In this case, the tenant RO testified through the ASL interpreter that they are unable to read; however, the tenant JO read the notice and was dealing with it. RO does not know what step JO made to comply with the time limits.

Although I accept that the tenants have health and disabilities issues; however, I find the tenants have failed to prove that there were exceptional circumstances that prevented them from filing their application on time.

The tenant JO did not attend the hearing to provide any testimony on what steps they took to comply with the time limit set out in the Act. Therefore, I dismiss the tenants' application to be allowed more time. I find the tenancy has legally ended in accordance with the Act.

Since the tenancy has legally ended the landlord has agreed to extend the effective date of the Notice to October 1, 2016. I grant the landlord an order of possession on the extended effective date.

At the conclusion of the hearing the advocate stated that the landlord has been interfering with the tenants ability to obtain housing by providing unfavorable references that are untrue. The landlord denied doing so and stated they have not been approached for any references. While the reference of a tenant is not within my jurisdiction; however, there was no evidence presented at this hearing that gave cause for eviction of a tenancy of 12 years.

The notice to end tenancy was based on a 2 Month Notice to End Tenancy for Landlord's Use of Property. Further, the merits of the 2 Month Notice to End Tenancy were not considered only because the tenants were unable to prove that they had an exceptional circumstance that prevented them from filing their application on time. The tenants' application was dismissed on that basis.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession on the above extended vacancy date.

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: August 30, 2016

Residential Tenancy Branch