



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

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

- allow the tenants more time to make an application to cancel a notice to end tenancy pursuant to section 66; and
- cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord did not attend this hearing, which lasted approximately 30 minutes. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The male tenant (the "tenant") testified that he personally served the tenants' application for dispute resolution hearing package on the landlord on November 15, 2016. The female tenant testified that she witnessed the service. Based on the undisputed testimony of the tenants and in accordance with sections 89(2) of the *Act*, I find that the landlord was served with the tenants' application on November 15, 2016.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The tenant gave evidence that he was unaware that the 1 Month Notice must be disputed within ten days of receipt. The tenant stated that as both tenants worked during the day, and relied on public transit in a rural area with infrequent service it was not until November 2, 2016 that they were able to travel to an Advocacy Center to request assistance and advice on how to respond to the 1 Month Notice. The tenant testified that they were unable to see an advocate on that day and scheduled the earliest available appointment date which was November 15, 2016. The tenant stated that they returned for their appointment on November 15 and received advice and assistance in completing the application for dispute resolution. The tenant testified that he served the landlord personally with the application for dispute resolution on that same day.

The tenant testified that they no longer occupy the rental unit. The tenant gave evidence that the RCMP attended at the rental unit and they were escorted off the premises on November 30, 2016.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The Notice to End tenancy document itself sets out the timelines and process for a tenant to dispute such a Notice. Although the tenants have not filed the application for dispute resolution within the allotted time, the landlord did not attend this hearing to question the extent to which the tenants' circumstances for filing a late application constituted an exceptional circumstance as outlined in section 66 of the *Act*.

When the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. I find that the absence of the landlord prevents me from making a definitive conclusion as to the extent to which the landlord's 1 Month Notice complied with section 52 of the *Act* and was served in accordance with section 88 of the *Act*. Under these circumstances, I find that the landlord has not met the burden of proof in establishing entitlement to end this tenancy for cause on the basis of the 1 Month Notice. I allow the tenants' application to cancel the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed.

As the tenancy ended when the tenants vacated the rental unit and no application for the issuance of an Order of Possession is before me, I make no finding regarding 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 28, 2016

Residential Tenancy Branch