



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and more time to make the application. The landlord had also filed an Application for Dispute Resolution seeking an Order of Possession for cause; however it was unnecessary to deal with the landlord's application since the tenant had filed to dispute the 1 Month Notice.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – extension of time to file application to dispute 1 Month Notice

The tenant was served with a 1 Month Notice to End Tenancy for Cause dated November 23, 2016. In filing her application the tenant indicated she received it on November 23, 2016 although during the hearing she stated that she received it on or about November 25, 2016. The tenant filed this application on December 19, 2016.

A tenant in receipt of a 1 Month Notice has 10 days to dispute it by filing an Application for Dispute Resolution, as provided under section 47(4) of the Act. Under section 47(5), a tenant who does not file to dispute a 1 Month Notice within 10 days of receiving it is conclusively presumed to have accepted that the tenancy will end and vacate the rental unit by the effective date of the 1 Month Notice.

Clearly, the tenant did not file this application within 10 days of receiving the 10 Day Notice. However, section 66 of the Act permits the Director to grant an extension of time to file an application in limited circumstances. Section 66(1) of the Act provides that "The director may extend a time limit established by this Act only in exceptional circumstances..." "

The tenant applied for an extension of time under section 66 and I asked the tenant to provide the reason(s) for the delay in filing her application. The tenant explained that upon receiving the 1 Month Notice she wrote a letter to the landlord informing her that she was looking for alternative accommodation but was having difficulty finding a place and the landlord did not respond to the letter until December 14, 2016. The tenant provided a copy of the December 14, 2016 letter and in it the landlord states that the tenant's ability to find alternative accommodation is not her concern and that the eviction notice stands.

I find the reason for the delay in filing this application that was provided by the tenant is not an exceptional circumstance that would have prevented the tenant from filing an application within the time limit for doing so. Therefore, I declined to grant the tenant an extension of time to dispute the 1 Month Notice.

Since the tenant failed to file an application to dispute the 1 Month Notice within the time limit for doing so, I find that she was conclusively presumed to have accepted the tenancy under section 47(5) of the Act and I dismiss her application to cancel the 1 Month Notice. Having dismissed the tenant's application to cancel a Notice to End Tenancy, I must consider whether the landlord is entitled to an Order of Possession as required under section 55 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

As evidence for this proceeding, I was provided a copy of the 1 Month Notice to End Tenancy for Cause that was served upon the tenant on November 23, 2016. The 1 Month Notice identifies the tenant, the landlord, the rental unit address, has a stated effective date, a stated reason for ending the tenancy, and it is signed and dated by the landlord.

The tenant stated she has paid rent for January 2017. The landlord confirmed that she deposited the rent monies since the tenant had filed to dispute the 1 Month Notice; this hearing was set for a date in January 2017, and the tenant continues to occupy the rental unit but that she is not willing to permit occupancy beyond January 31, 2017.

Analysis

Section 55(1) of the Act provides as follows:

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.

[Reproduced as written]

Upon review of the 1 Month Notice submitted as evidence, I am satisfied that it meets the form and content requirements of section 52 of the Act. Having dismissed the tenant's application to cancel the 1 Month Notice I find the criteria of section 55(1) have been met. I am further satisfied that the landlord did not subsequently communicate to the tenant that she would withdraw the 1 Month Notice or reinstate the tenancy. Therefore, I find the landlord is entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession that is effective at 1:00 p.m. on January 31, 2017.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed. The landlord has been provided an Order of Possession effective at 1:00 p.m. on January 31, 2017.

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: January 19, 2017

Residential Tenancy Branch