



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, O

Introduction

In the first application, by file number, the tenants apply to cancel a one month Notice to End Tenancy for cause dated April 15, 2017 and received April 16. They also seek an extension of time past the ten day period set by law for her to make there application. The claim also includes a request for “other” unspecified relief, not pursued at hearing.

In the second application the landlords seek an order of possession pursuant to the Notice and for a monetary award for unpaid rent.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

The initial issue is whether or not the tenant should be granted and extension of time to make her application challenging the landlord’s Notice. A second issue is what, if anything, is owed for rent?

Background and Evidence

The rental unit is a three bedroom upper portion of a house. There is a basement suite that the landlord rents to others. The tenancy started in on February 6, 2017. There is a written tenancy agreement, not produced by either side during this hearing. The rent is \$1400.00 per month, payable on the last day of the prior month. The landlord holds a \$700.00 security deposit and a \$300.00 pet damage deposit.

The attending tenant Ms. C.H. received the Notice on April 15, 2017 by hand. The effective date stated in the Notice is May 31, 2017. The Notice states that the tenant had ten days to

dispute the Notice and that if she did not dispute it she would be presumed to have accepted it then must move out by the effective date. Those statements paraphrase the law as set out in s. 47 (4) and (5) of the *Residential Tenancy Act* (the “Act”). Thus the tenants were required to make the application no later than April 25.

The tenants commenced to bring their application to challenge the Notice by signing an application for dispute resolution on May 5, twenty days after receiving the Notice. Ms. C.H. submitted a request for a filing fee waiver on the same day and another on May 9. The request was processed and the fee was waived by the Residential Tenancy Branch (the “RTB”) on May 10. The RTB processed and issued the application and a hearing letter on May 15.

The tenant served the landlord with the application and hearing letter on May 16.

The tenant Ms. C. H. testifies that when the landlord served her with the Notice she was told to disregard it and that it was simply part of a “paper trail.” She says that her co-tenant/roommate Ms. M.L. was there and heard the landlord.

Ms. M.L. did not testify at this hearing. She signed a written statement but the statement does not refer to the landlord’s alleged statement when serving the Notice.

Ms. C.H. says that at the start of May the landlord contacted her about moving at the end of the month and that was when she realized that the landlord was relying on the Notice to end the tenancy. Thereafter the tenant began the process of disputing the Notice.

The landlord Ms. R. testifies that she did not represent to the tenant that the Notice would not be effective. She says she told the tenant that if she wanted to make plans to stay she must contact the landlords within a week. The tenant made no contact.

Ms. R. testifies that in the meantime she has entered into a written tenancy agreement to rent the upper suite to a company for a tenancy that was to start June 1, 2017. She says there are three people who will be occupying the upper suite under that tenancy agreement and that they are presently staying in the two bedroom basement suite until this matter is resolved.

The tenant notes that as far as she can tell there are two adults and two teenage boys living in the basement suite.

Analysis

Section 66 of the *Act* allows an arbitrator to extend time periods in “exceptional circumstances.”

The tenant’s version of events at the time the Notice was served is not reconcilable with the landlord’s version. Neither version is corroborated by other evidence.

The burden of showing that the landlord verbally nullified the eviction Notice is on the one alleging it: the tenant. In this case, she has not satisfied that burden.

I find that the tenant has not shown exceptional circumstances justifying the extension of time to make her application to dispute the Notice.

As well, in reliance on the effectiveness of the Notice after expiry of the ten day dispute period, the landlord has entered into a new tenancy for the rental unit commencing June 1. So long as she cannot provide possession of the rental unit to the new tenant(s), she is at risk of suffering financial loss.

For these reasons the tenants' claim for an extension of time to make an application to dispute the eviction Notice must be refused. . As a result, this tenancy ended on May 31, 2017 by operation of the Notice and the landlord is entitled to an order of possession.

It is not disputed that the June rent of \$1400.00 has not been paid. I grant the landlords a monetary award in that amount

Conclusion

The tenants' claim for an extension of time to make her application is dismissed
The tenants did not particularize or pursue the claim for "other" relief and it is dismissed.

The landlords will have an order of possession. In addition to the award of \$1400.00 for June rent, they are entitled to recovery the \$100.00 filing fee for their application. They will have a monetary order against the tenants in the amount of \$1500.00.

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: June 21, 2017

Residential Tenancy Branch