



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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package in person on August 22, 2017. I accept the undisputed affirmed testimony of the tenant and find that the landlord was properly served in person on August 22, 2017 as claimed by the tenant.

Preliminary Issue

Is the applicant entitled to more time to make an application to cancel the 1Month Notice?

The tenant provided undisputed affirmed testimony that he was served with the 1 Month Notice dated August 8, 2017 on August 11, 2017 upon his return from hospital. The tenant claimed that he was recuperating from an illness that required extensive treatment and as a result of this he was not able to apply for dispute until August 22, 2017, on the 11th day after receiving the 1 Month Notice.

I accept the undisputed affirmed evidence of the tenant and find that due to his extensive treatment he was unable to file his application within the 10 day limitation period.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

As such, the tenant’s application for more time to make an application for dispute is granted. The hearing shall proceed on the tenant’s request to cancel the notice to end tenancy issued for cause.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

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 applicant’s claim and my findings are set out below.

The tenant provided undisputed affirmed testimony that this tenancy began in August of 2013 on a month-to-month basis. The monthly rent is \$550.00 payable on the 1st day of each month. A security deposit of \$275.00 was paid.

In this case, the applicant failed to provide a copy of the 1 Month Notice as required as part of the application for dispute. However, the tenant was able to provide the following details in his direct testimony regarding the 1 Month Notice.

On August 11, 2017, the landlord served the tenant with the 1 Month Notice dated August 8, 2017. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2017 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The tenant stated that the landlord had provided written details for the cause which state in part,

1. The tenant keeps subletting the unit and collects rent without the consent of the landlord.
2. The tenant gets drunk at night, gets loud and fights with others in the unit.
3. The tenant brings hookers continuously to the property.
4. The tenant has removed the smoke detector.
5. The tenant is under the influence of alcohol.
6. The tenant smokes inside the apartment.

The tenant has provided both written and verbal details disputing the landlord's claims. The tenant has disputed all of the landlord's claims as listed on the notice to end tenancy.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlord did not attend and present any evidence in support of the reasons for a notice to end tenancy. The tenant has disputed the reasons listed by the landlord on the 1 Month Notice. I find that the landlord has failed in his onus of proving on a balance of probabilities that at least one of the reasons set out in the notice. As such, the 1 Month Notice dated August 8, 2017 is set aside. The tenancy shall continue.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted.

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: November 10, 2017

Residential Tenancy Branch