



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, LRE, MNSD, MNDC, OPL, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for money owed; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to dispute a notice to end tenancy;
2. To cancel a Two Month Notice to End Tenancy for Landlord's Use of Property;
3. For a monetary order for money owed;
4. To suspend or set conditions on the landlord's right to enter; and
5. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties have indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the following issues.

Issues to be Decided

landlord's application:

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of filing fee?

The tenant's application:

1. Should the tenant be allowed more time to dispute a notice to end tenancy?
2. Should the Two Month Notice to End Tenancy for Landlord's Use of Property be canceled?
3. Is the tenant entitled to recover the cost of filing?

Background, Evidence and Analysis

The tenant acknowledged they received the notice to end tenancy on July 17, 2017. Under the Act, the tenant had 15 days to dispute the notice, pursuant to section 49(8) of the Act. I find the tenant had until August 1, 2017, to file their application. The tenant filed their application on August 18, 2017, which is outside the statutory time limit.

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

Exceptional circumstances include such issues as the party had been incapacitated due hospitalization or some catastrophic event that has prevented the party from submitting an application.

In this case the tenant testified that they did not dispute the notice to end tenancy within the statutory timeframe, as they did not know that was an option. The tenant stated that they did not read the notice.

Based on the above testimony of the tenant, I find the tenant has failed to prove an exception circumstances occurred that permitted them from filing their application within the statutory time limit. Failure to read the notice is not an exceptional circumstance.

Therefore, I dismiss the tenant's application to be allowed more time. As the tenant was no successful with their application, I decline to award the filing fee to the tenant.

Order of possession for the landlord

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.

As I have dismissed the tenant's application, I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property; I find the notice to end tenancy complies with section 52 of the Act. I find the tenancy legally ended on September 30, 2017, and the tenant is now overholding the rental unit.

As the landlord have accepted occupancy rent for the month of November 2017, I find it appropriate to extended the effective vacancy date to November 30, 2017, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the landlord was successful with their application, I find the landlord is entitled to recover the filing from the tenant. I authorize the landlord to retain the amount of \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant's application to be allowed more time to dispute a notice to end tenancy is dismissed. The landlord's application for an order of possession is granted. The landlord is authorized to retain the above noted amount from the tenant's security deposit.

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