



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

On January 8, 2018, the Tenant applied for more time to make an application to cancel a notice to end tenancy and to cancel a 1 Month Notice To End Tenancy For Cause dated December 11, 2017.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord attended the hearing. The Tenant was assisted by an advocate. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Tenant be granted more time to dispute the 1 Month Notice To End Tenancy For Cause?

Background and Evidence

The parties testified that the tenancy commenced in May 2008, and is currently a month to month tenancy. Rent in the amount of \$615.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$235.00 to the Landlord.

The Landlord testified that he issued the Tenant a 1 Month Notice To End Tenancy For Cause ("the 1 Month Notice") on December 11, 2017, by posting the Notice to the Tenants door. The reasons for ending the tenancy contained within the 1 Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The Tenant confirmed that he received the 1 Month Notice on December 11, 2017.

The Tenant disputed the 1 Month Notice on January 8, 2018.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice. The effective date of the Notice is January 31, 2018.

The Tenant's Application includes a request for more time to to make an application to cancel a notice to end tenancy. The Tenant was asked to provide reasons why he did not dispute the 1 Month Notice within 10 days of receiving the Notice. The Tenant testified that he hurt his elbow and was sick. He submitted that he was in pain and was not able to get assistance with his advocate. The Tenant did not provide any medical evidence regarding his injury to support his testimony that it prevented him from disputing the Notice.

The Tennats advocate Mr. D.D. testified that the Tenant saw him on January 8, 2018.

The Landlord testified that he received complaints from other occupants regarding noise and the smell of marijuana coming from the Tenant's unit. The Landlord testified that he

spoke to the Tenant about the smoking and noise on numerous occasions. The Landlord decided to end the tenancy by issuing the 1 Month Notice To End Tenancy For Cause.

The Landlord submitted that the Tenant has paid the rent for March 2018, would agree to permit the Tenant to remain in the unit the end of March 2018.

Analysis

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Section 47(5) of the Act states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the 1 Month Notice To End Tenancy For Cause on December 11, 2017, and was provided with information within the Notice regarding the timeframe for disputing the Notice. The Tenant was required to dispute the 1 Month Notice within 10 days.

I find that the Tenant disputed the 1 Month Notice on January 8, 2018, which was 28 days after receiving the Notice.

I find that the Tenant provided insufficient evidence to allow me to find that there were exceptional circumstances that prevented him from disputing the Notice within 10 Days of receiving it. I find that the elbow injury and pain as described by the Tenant does not amount to an exceptional circumstance. The Tenant's request for additional time to dispute the 1 Month Notice is denied.

Pursuant to section 47(5) of the Act the Tenant is deemed to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. The Landlord agreed that the Tenant could stay in the unit until the end of

March 2018. I grant the Landlord an order of possession effective at 1:00 pm on March 31, 2018. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants request for additional time to dispute the 1 Month Notice is denied. The Tenant provided insufficient evidence to allow me to find that there were exceptional circumstances that prevented him from disputing the Notice within 10 Days of receiving it.

Pursuant to section 47(5) of the Act the Tenant is deemed to have accepted that the tenancy ended on the effective date of the Notice.

I grant the Landlord an order of possession effective at 1:00 pm on March 31, 2018. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

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: March 05, 2018

Residential Tenancy Branch