



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated and received February 19, 2018 and for an extension of time to do so. The Notice claims that the landlord has all the necessary permits and approvals to renovate or repair the rental unit and that to do so requires the rental unit to be vacant.

Both parties attended the hearing, the landlord by its representative Mr. Z., 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

Should the time for the tenant to have made his application be extended? If so, then does the landlord have good and lawful grounds for issuing the two month Notice?

Background and Evidence

The rental unit is a one bedroom apartment in a ten unit building. The tenancy started in August 2015. The monthly rent is currently \$1000.00. The landlord holds a \$450.00 security deposit.

The tenant received the two month Notice on February 19, along with a letter from the landlord to all the tenants indicating that their tenancy will end April 30, encouraging the tenant to immediately start looking for other accommodation and that rent for the months of March and April would be waived.

The tenant's application was made on April 29, 2018, the date the fee was waived.

The first part of the hearing was devoted to the question of whether or not the time for the tenant to make his application and that proved to be conclusive of the matter.

The tenant's representative states that the tenant is a 67 year old man with limited English skills and no family nearby to help him. He did not understand the Notice, his right to dispute it nor the grounds that might be available for such a dispute. Ultimately another resident informed him of his rights and he brought this application immediately.

The tenant was on a disability income but as the result of an administration review he did not understand to be happening, he has lost that income for the foreseeable future. He has no fixed source of income. As the result of the landlord's letter accompanying the Notice he did not pay the March or April rent. He has not payed or tendered May or June rent and does not have the money to pay.

The tenant has looked for another place but has no funds to pay for one.

Mr. Z. argues that not knowing about a right to dispute a Notice is not a defence. He indicates that all the tenants in the building were given the same Notice and letter. None applied to dispute their Notice within the 15 day period allowed by law but some if not all have now done so, requesting that time be extended. One case has been heard. In that case the time was extended and the Notice was cancelled.

Analysis

The other case mentioned has not been reviewed or considered in regard to the question of the extension of time. Each case rises or falls on its facts and so the previous decision would be of little weight.

Section 66 of the *Act* permits an arbitrator to extend time "only in exceptional circumstances."

It prohibits an extension of time past the effective date of a Notice to End Tenancy. In this case the effective date of the Notice is April 30 and so the tenant's request is not barred by that provision.

The tenant is in a very unfortunate situation. On this evidence, in all likelihood he will find himself homeless if he is evicted. On the other side of things, he cannot pay the current arrears of rent nor does he have the means to ensure payment of rent if he stayed. The landlord would be forced to become the tenant's creditor.

The crux of the tenant's reasons for failing to make a timely application are that he is basically illiterate in the English language and has no one to assist him.

It is clear that the tenant was sufficiently proficient to understand the landlord's letter accompanying the notice informing him his tenancy was ending April 30. He did not pay the March or April rent because the letter told him it was waived.

In my view, if the tenant was able to understand that, then he could understand the very clear information contained in the Notice itself: namely, that he had 15 days to apply to challenge the Notice and that if he did not do so then he would be taken to have accepted the ending of his tenancy. The Notice is also clear that a tenant could seek direction from the Residential Tenancy Branch by toll free telephone if he had any questions.

The tenant may not have known the law relating to what a landlord must prove to justify such a Notice (having "all necessary permits and approvals" to do the work, for example), but few people do. That is why they enquire.

I find that the tenant has simply sat on his rights. He must have been aware that the Notice was an important document yet he simply did not take the steps a reasonable person in his situation would have taken.

Conclusion

I find that there are no exceptional circumstances in this case that would justify the extending of time for the tenant to apply to cancel the Notice.

As a result, this tenancy ended on April 30, 2018 by operation of the Notice.

Pursuant to s. 55 of the *Act*, the landlord will have an order of possession.

This decision was rendered orally at hearing and 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 20, 2018

Residential Tenancy Branch