



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, MT, OLC, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 14, 2018 (the "Application"). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 27, 2018 (the "Notice");
- For more time to file the Application;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For an order that repairs be made to the rental unit; and
- Reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agents appeared at the hearing for the Landlord.

Agent S.R. confirmed the correct rental unit address and this is reflected on the front page of this decision.

The Tenant confirmed the request for the Landlord to comply with the Act, regulation and/or the tenancy agreement was the same as the dispute of the Notice and request for repairs. This will not be considered as a separate issue.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant I would not consider the request for repairs as this issue is not sufficiently related to the dispute of the Notice which is the main issue before me. This request is dismissed with leave to re-apply. This does not extend any time limits under the *Residential Tenancy Act* (the "Act").

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

S.R. testified that the Tenant sent the hearing package and evidence to a previous address for the Landlord despite the correct address being on the Notice and confirmed prior to the Tenant sending the documentation. S.R. testified that the hearing package and evidence were received December 30, 2018 but someone had gone through the package and it appeared evidence was missing. S.R. confirmed the entire hearing package was received. At first, S.R. said the Landlord did not have sufficient time to prepare for the hearing. When asked why one month was not sufficient to prepare, S.R. then acknowledged that the Landlord had sufficient time but again raised the issue of the missing evidence.

I reviewed the relevant evidence submitted by the Tenant and confirmed that S.R. had received all but one of the documents. The one document not received was a general history totalling three pages.

The Tenant acknowledged sending the package to a different address than noted on the Notice despite having received the Notice. He said he used an address on a previous notice to end tenancy from 2017 because that is the notice to end tenancy he grabbed.

I was satisfied that the evidence was not served in accordance with section 88 of the *Act* given the Tenant sent it to a previous address of the Landlord obtained from an old notice to end tenancy. I do not find it reasonable that the Tenant used this address when he had received the updated address on the Notice. Given that the evidence was not served in accordance with the *Act*, and the general history document was not received by the Landlord, I excluded this piece of evidence.

I note that the hearing package and remaining relevant evidence were received by the Landlord December 30, 2018, 28 days prior to the hearing. I found this sufficient and found no unfairness in proceeding with the hearing in the circumstances.

The Tenant confirmed he received the Landlord's evidence and raised no issues in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible and relevant documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be granted more time to file the Application?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
4. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified that he had a written tenancy agreement with the previous owner of the rental unit which started in 2011. He said the Landlord purchased the rental unit in September of 2017. S.R. agreed with this but did not know when the tenancy started.

The Tenant testified that the agreement was a fixed term tenancy for one year and then became a month-to-month tenancy. S.R. did not dispute this.

Both parties agreed rent is \$900.00 per month due on the first day of each month.

The Notice was submitted as evidence and the parties agreed it was the correct Notice. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of January 31, 2019. The grounds for the Notice are that "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". The purchaser name and address are provided on the Notice. The Tenant did not take issue with the form or content of the Notice.

There was no issue that the Notice was posted on the door of the rental unit November 27, 2018. The Tenant testified that he received all three pages of the Notice the same day, November 27, 2018.

The Tenant applied to dispute the Notice online on December 14, 2018.

In relation to the request for more time to file, the Tenant testified that he was late filing because of his work schedule. He testified that he does shift work and did not have adequate time to put everything together for the Application. He said he works a lot and different hours. The Tenant testified that he works 8:00 a.m. to 11:00 p.m. He said he works evenings and days which did not give him much time to get the Application out. He noted that he does not have a printer at home.

The Tenant did not submit evidence in relation to his request for more time to file the Application and did not point to any other evidence that was relevant to this aspect of the Application during the hearing.

S.R. submitted that the Tenant should not be granted more time to file the Application. He submitted that the Tenant is just trying to drag things out. S.R. testified that the Tenant has communicated with him almost daily which raises the question of why the Tenant did not have enough time to file the Application.

I heard the parties on the grounds for the Notice which I will not detail here given my decision on the request for more time to file the Application.

The parties agreed the Tenant has paid rent until January 31, 2019. S.R. sought an Order of Possession effective January 31, 2019.

Analysis

The Notice was served on the Tenant November 27, 2018 and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(5) of the *Act*. The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. The Tenant acknowledged receiving the Notice November 27, 2018. The Tenant filed the Application online on December 14, 2018. This was outside the 15-day time limit set out in the *Act*. The Tenant was required to file the Application no later than December 12, 2018.

Section 66(1) of the *Act* allows me to extend the time to file the Application and states:

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]. [emphasis added]

Policy Guideline 36 sets out the meaning of exceptional circumstances and states:

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 very 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

...

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit

- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

I am not satisfied the Tenant has shown exceptional circumstances existed such that the time for filing the Application should be extended. Having to work is a foreseeable circumstance. The Tenant had 15 days in which to find time to file the Application. An application for dispute resolution can be filed online, as it was in this case. The ability to file the Application in time was within the control of the Tenant. I do not accept that the Tenant could not make time within the 15-day time limit to file the Application online. The Tenant did not outline any steps he took to comply with the time limit. The Tenant did not provide any evidence of his work schedule or evidence to support his position that he did not have enough time to file the Application.

I do not accept that having to work is akin to being in the hospital which may amount to an exceptional circumstance. I find having to work more akin to the circumstances outlined above which will likely not be considered exceptional circumstances.

I note that the Notice clearly states at the top of page one that the Tenant had 15 days to dispute the Notice. It also outlines how the application for dispute resolution can be filed. Further, it states the consequences of failing to file in time. I also note that the Tenant is expected to know his rights and obligations under the *Act* and failing to know or understand his rights and obligations is not a sufficient reason to fail to comply with the requirements set out in the *Act*.

Given the Tenant failed to satisfy me that exceptional circumstances existed such that the time to file the Application should be extended, I decline to extend the time to file the Application. The Tenant's request for more time to file the Application is dismissed without leave to re-apply. Further, I will not consider the Tenant's dispute of the Notice and therefore this aspect of the Application is dismissed without leave to re-apply.

Under section 55(1) of the *Act*, I am required to issue a landlord an Order of Possession when a tenant applies to dispute a notice to end tenancy, the dispute is dismissed and the notice complies with section 52 of the *Act*.

I also note section 49(7) of the *Act* which states:

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*. I also note that it complies with section 49(7) of the *Act*.

I have dismissed the Tenant's dispute of the Notice and found the Notice complies with section 52 of the *Act*. Therefore, I issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective January 31, 2019 as this date complies with section 49(2)(a) of the *Act*.

I decline to award the Tenant reimbursement for the filing fee given he was not successful in this application.

Conclusion

The Tenant's request for more time to file the Application is dismissed without leave to re-apply. Therefore, the Tenant's dispute of the Notice is dismissed without leave to re-apply. The Tenant is not entitled to reimbursement for the filing fee given he was not successful in this application.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on January 31, 2019. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 28, 2019

Residential Tenancy Branch