



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

This review 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 landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing to allow the landlord to join. The Notice of Hearing was confirmed to have provided the correct information to connect. The tenant attended with an advocate assisting and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they received the landlord's 1 Month Notice dated October 30, 2018 on November 2, 2018. Based on the testimony I find that the 1 Month Notice was served on the tenant in accordance with section 88 of the *Act* on that date.

The tenant testified that they served their application for dispute resolution dated November 16, 2018 personally to the landlord on or about that date. Based on the testimony I find that the landlord was served with the application in accordance with section 89 of the *Act* on November 16, 2018.

The tenant testified that they had served the Review Decision and Notice of Reconvened Hearing dated January 13, 2019 on the landlord personally on or about the 16th of January, 2019. The tenant testified that she handed the materials to the landlord

personally at his address on that date though she did not have any witnesses. Based on the testimony of the tenant I find that the landlord was served with the Notice of Reconvened Hearing and Review Decision on January 16, 2019 in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the tenant be granted more time to file an application to cancel the 1 Month Notice?

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant gave undisputed evidence as the landlord did not attend this hearing. The tenant testified that they were served with a 1 Month Notice dated October 30, 2018 on November 2, 2018. The tenant filed their application for dispute resolution on November 16, 2018. The tenant did not recall why they did not file their application earlier.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

The tenant testified that they received the 1 Month Notice on November 2, 2018. Pursuant to section 47(4) of the *Act*, and as detailed in writing on the 1 Month Notice form, a tenant may dispute a notice by making an application within 10 days after the date the notice is received. In the present case as the tenant received the notice on November 2, 2018, the tenant had until November 12, 2018 to file an application. The tenant filed their application on November 16, 2018. I find that the tenant did not file their application within the timeline provided under the *Act*.

The tenant did not provide a reason why they did not file their application within the legislated timeline. While the tenant postulated that there may have been health reasons, they did not submit any documentary evidence to support their suggestion. I find that the tenant has not met their evidentiary burden to show that there were any circumstances, exceptional or otherwise, that would give rise to a basis to extend the time limits established in the *Act*.

Based on the evidence of the tenant I find that they were served with a 1 Month Notice on November 2, 2018 and did not file an application to dispute the notice within the time frame established under the *Act*. Accordingly, I dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

- 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.

A copy of the 1 Month Notice was submitted by the tenant for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

However, in the absence of the landlord to present evidence I find that I am unable to determine if the underlying cause for ending this tenancy as indicated on the 1 Month Notice has any basis. While the form of the notice complies with the requirements of the *Act*, I am unable to make a finding on the contents, specifically the reasons given for this tenancy to end. As such, while I have dismissed the tenant's application, I decline to issue an Order of Possession in the landlord's favour.

Conclusion

The decision and order of December 27, 2018 are cancelled and replaced with this decision.

The tenant's application is dismissed without leave to reapply.

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: February 22, 2019

Residential Tenancy Branch