



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Les Investissements Immobiliers Caime
Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened in response to an application made June 28, 2019 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order allowing more time to make the application to dispute the notice to end tenancy - Section 66.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to an extension of the time limit to dispute the notice to end tenancy?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on July 15, 2018. Rent of \$975.00 is payable on the first day of each month. On June 6, 2019 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by giving the Notice to the Tenant in person. The Notice is signed by the Landlord and dated June 6, 2019. The Notice sets out an effective date that is automatically corrected under the Act to be July 31, 2019. The Notice sets out the dispute address and is on the approved form. The Notice sets out two reasons:

- Tenant has allowed an unreasonable number of occupants in the unit; and
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenant, 72 years old, states that it was unable to apply within the time allowed as the Tenant had undergone knee replacement surgery on April 30, 2019 that stopped the Tenant from driving or walking for approximately 6 weeks. The Tenant states that it was unable to obtain help to make the application as family members were unavailable. The Tenant states that it was also prevented from making the application in time as the Tenant was on medication, was stressed and did not know what to do. It is noted that the Tenant provided a physio document to the RTB as evidence to support its claim for more time. The Tenant confirms that this document was not provided to the Landlord. The Landlord states that if the Tenant's claim to cancel the Notice is not successful the Landlord seeks an order of possession to be effective September 30, 2019.

Analysis

Rule 3.1 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that an applicant must serve the Respondent with any evidence submitted to the RTB and to be relied upon in the proceedings. As the Tenant did not provide the physio document to the Landlord I find that it may not be considered in these proceedings.

Sections 47(4) and 47(5) of the Act provides that

- a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice; and
- If a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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 undisputed evidence that the Tenant received the Notice on June 6, 2019, I find that the Tenant had until June 16, 2019 to make its application to dispute the Notice. As the Tenant made its application on June 28, 2019, I find that the Tenant did not meet the time limit allowed to dispute the Notice.

Section 66(1) of the Act provides that a time limit may only be extended in exceptional circumstances. According to the Tenant's evidence of surgery on April 30, 2019 and recovery time of approximately six weeks, the Tenant would have been able to drive and walk by approximately June 12, 2019, prior to the time limit date of June 16, 2019. There is no evidence that during the recovery period or after the Tenant was unable to communicate by phone or through the internet to obtain help outside its family. There is no evidence that the Tenant was taking medication for anything other than the surgery and there is no supporting evidence that any medication stopped the Tenant from communicating over the phone or internet to obtain help. There is no supporting evidence that the level of stress felt by the Tenant was so significant that it prevented the Tenant from taking any action at all after receiving the Notice. For these reasons I find that the Tenant has not provided sufficient evidence to substantiate that the Tenant experienced exceptional circumstances that prevented the Tenant from making its application to dispute the Notice within the time limit. I find therefore that the Tenant must vacate the unit as the tenancy has been ended accordingly by the Landlord. The Tenant's application is dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy 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.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession as requested to be effective September 30, 2019.

Conclusion

The Tenant's application is dismissed.

I grant the Landlord an Order of Possession effective 1:00 p.m. on September 30, 2019.

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

Dated: August 20, 2019

Residential Tenancy Branch