



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47; and,
- more time to make an application to cancel the landlord's One Month Notice pursuant to section 66.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to service of the tenant's application and evidence submissions. The landlord did not submit any evidence in response to the application and was relying on the documentary evidence submitted by the tenant.

Preliminary Issue – Timing of tenant's application and Naming of parties on the One Month Notice

The rental unit is a two-bedroom apartment. A written tenancy agreement was not provided on file. The parties confirmed that the tenant M.K. is named as a co-tenant on a lease which began on July 1, 2010. The co-tenant on the lease J.K. was the original tenant and had resided in this rental unit before M.K. moved in and was subsequently added to the lease. The tenants pay a rent of \$763.00. Only M.K. is named on the One Month Notice. The landlord advised that they are only pursuing an end to the tenancy of M.K. The landlord advised they wish to continue the tenancy of J.K. and he was advised of such when the One Month Notice was served. The One Month Notice was served on July 12, 2019 and was served personally to J.K. as the tenant M.K. was out of town at the time. M.K. submits that her application was filed three days outside of the 10 Day deadline to dispute such a Notice as she was away and her co-tenant J.K. did not immediately break the news to her about the Notice. She applied to dispute the Notice as soon as she learned about it. M.K. submitted copies of ferry tickets to support that she was away at the time the Notice was served.

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances.

I accept the testimony and supporting documents submitted by the tenant M.K. and find there were exceptional circumstances which prevented her from filing the application with the 10 Day time limit required under the Act. The tenant was away and did not receive the One Month Notice immediately. The tenant's request to extend a time limit to file this application is granted.

Co-tenants are jointly and severally liable and share equal rights under the tenancy agreement. Therefore, if the landlord ends the tenancy for one tenant, the tenancy is automatically ended for the other tenant. In other words, the Notice to End tenancy is applicable to the tenancy as a whole not to individual co-tenants. The landlord in this case failed to name both co-tenants on the One Month Notice and also advised the co-tenant J.K. that they were not seeking to end his tenancy.

Therefore, I find the landlord needs to put the tenant J.K. on notice that the tenancy as a whole is subject to termination and J.K. should also be named on the One Month Notice. If the co-tenancy is ended, the landlord and J.K. then have a right to enter into a new tenancy agreement naming only J.K. as the tenant. J.K. and the landlord could also mutually agree to end the tenancy if they wish to do so and enter into a new tenancy thereafter.

Accordingly, I find the One Month Notice dated July 12, 2019 must be set aside and the landlord be required to name both co-tenants if they wish to pursue an end to this tenancy.

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice, dated July 12, 2019, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: September 27, 2019

Residential Tenancy Branch