



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was scheduled for 9:30 on November 12, 2019, via teleconference call, to deal with the tenant's application to cancel a 1 Month notice to End Tenancy for Cause and more time to make the application. The tenant's father appeared as the tenant's representative. There was no appearance on part of the landlord despite leaving the teleconference call open more than 15 minutes to give the landlord sufficient time to connect to the hearing.

Preliminary and Procedural Matters

Since there was no appearance on part of the landlord, I explored service of hearing documents upon the landlord. The tenant's representative testified that he, along with his son the tenant, served the hearing package to the landlord in person at the landlord's service address. The tenant's representative testified that the landlord threw the documents on the ground and told the tenant to give them to her agent. The hearing package was left with the landlord. Later, the landlord's agent telephoned the tenant and confirmed he had received the hearing package.

I noted that the Residential Tenancy Branch records reflect that an agent for the landlord contacted the Residential Tenancy Branch on October 16, 2019 and was informed the matter was scheduled for a hearing.

I noted that I had not been provided a copy of the 1 Month Notice to End Tenancy for Cause and I ordered the tenant's representative to read it into evidence which he did. I ordered the tenant's representative to also upload a copy of the 1 Month Notice to the Residential Tenancy Branch service portal, which he did. I note that in completing the 1 Month Notice it was signed by an agent for the landlord but the landlord was identified

as the party named in this dispute and the service address listed on the 1 Month Notice is the address the tenant's representative described in testifying where he served the landlord.

Considering the above, I was satisfied the landlord was duly served with notification of this proceeding and I proceed to consider the tenant's application.

I heard that the tenant received the subject 1 Month Notice on October 1, 2019; however, this application was not filed until October 15, 2019 which is beyond the 10 day time limit for disputing a 1 Month Notice as provided under section 47(4) of the Act. In filing this Application for Dispute Resolution, the tenant requested more time to make the application.

Section 66 of the *Act* provides that an arbitrator may extend or modify a time limit established by the Act in exceptional circumstances. I heard that the reason the 1 Month Notice was not disputed within time is because the tenant has mental illness and diminished mental capacity to deal with matters on his own and the tenant's father has to prompt and assist the tenant; however, the tenant's father was in another town and did not make enquiries with his son sooner. The tenant's father stated he could provide medical evidence to demonstrate his son's illness if needed. Given there was no appearance on part of the landlord to challenge the request for more time or the reason for seeking an extension, I accepted the oral testimony of the tenant's father as evidence that exceptional circumstances prevented the tenant from making this application within time and I granted an extension to the date of filing. The tenant's father was cautioned that, in future, his oral testimony alone may not be sufficient to demonstrate an exceptional circumstance.

Having granted an extension, I proceed to consider whether the 1 Month Notice should be upheld or cancelled.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated September 30, 2019 be upheld or cancelled?

Background and Evidence

The 1 Month Notice to End Tenancy for Cause was dated September 30, 2019 and is in the approved form. It was signed and dated by the landlord's agent and there are reasons for ending the tenancy listed on the second page of the notice.

The landlord did not provide or present any evidence in support of ending the tenancy.

The tenant submitted on the Application for Dispute Resolution that the allegations by the landlord are not accurate and the tenant is being discriminated against because of his disabilities and ailments. The tenant's father acknowledged there was attendance to the property by medical personal but explained it was in response to the tenant's medical issues.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

In the absence of any evidence from the landlord, I find the landlord has not met the burden to prove the tenancy should end for the reasons indicated on the notice. Therefore, I cancel the 1 Month Notice and the tenancy continues at this time.

Conclusion

The 1 Month Notice dated September 30, 2019 is cancelled and the tenancy continues at this time.

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: November 13, 2019

Residential Tenancy Branch