



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, RP

Introduction

This 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person on December 16, 2019. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

Is the tenant entitled to more time to make an application for dispute?

In this case, the tenant's written details state that she received the 1 month notice in person on October 29, 2019 and applied for dispute on November 26, 2019, approximately 28 days after receiving it. The applicant provided written details for applying late which states:

MY APPLICATION IS LATE BECAUSE I WAS DISCUSSING A POTENTIAL SETTLEMENT WITH THE LANDLORD PER THE LETTER ATTACHED FROM MY COUNSELLOR.

A review of a submitted letter dated November 19, 2019 states in part that the counsellor was applying to a Treatment Centre and waiting for confirmation of acceptance during the week of November 4 to 9, 2019. A copy of the letter was forwarded to the Landlord on November 5, 2019. It also states that the Landlord was aware of the application being processed and was willing to give the tenant an extension of her rental unit.

The landlord disputed the tenant's claim that a settlement was made. The landlord confirmed receipt of the letter from the tenant, but stated that at no time did the landlord grant an extension to the effective end of the tenancy notice. The landlord confirmed that discussions were made with the tenant, that the tenant must provide specific documentation for the landlord to consider extending the tenancy. The landlord stated that no such documentation was provided by the tenant. The landlord submitted in support of this argument a signed letter dated December 6, 2019 that states in part,

... She advised me she was going to treatment on November 12 to December 23 and therefore, couldn't move out on November 30. I asked for confirmation from the treatment center that she would in fact be attending. I informed her I was not rescinding the eviction notice and that it still stood. She said she would bring in confirmation from the treatment center...

Residential Tenancy Act, Section 47 (4) states in part that a tenant who receives this a notice may dispute it by making an application for dispute resolution within 10 days after the date the tenant receive the notice.

In this case it is clear that the tenant failed to make an application within the allowed 10 days. The tenant argued that an agreement was in place with the landlord to extend the date for which the end of tenancy would occur and relies upon the above noted letter. The landlord disputed this arguing that at no time was the eviction notice rescinded.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
- a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

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 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.

I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me that exception circumstances existed that prevented her from making an application for dispute within the allowed timeframe. I note at the end of the hearing the tenant then stated that her reason for filing an application late was because she was ill and in the hospital. I note that at no other point in the hearing did the tenant raise this reason. I also note that nowhere in the tenant’s written application does it state that she was unable to file the application within the allowed timeline due to an illness or from being in the hospital. The tenant’s request for more time is denied.

Pursuant to section 47 (5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy was at an end having failed to file an application for dispute within the allowed 10 days after receiving the notice. The landlord is granted an order of possession to be effective 2 days after it is served upon her as the effective end of tenancy date of the notice to end tenancy has now passed.

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: January 10, 2020