



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNC MNDCT MT OLC PSF RP

Landlord's application: OPC

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a *1 Month Notice to End tenancy for Cause* and an extension of time to make her application to cancel the notice, among other remedies. The landlords applied for an Order of Possession based on the same *1 Month Notice to End Tenancy for Cause*.

Both parties appeared or were represented during the hearing.

Preliminary and Procedural Matters

1. Service of hearing documents

At the outset of the hearing, I explored service of hearing documents upon each other.

The tenant sent her hearing package and supporting documents to the landlords via registered mail sent on December 5 and December 6, 2019. The landlord confirmed receipt of the two packages sent by the tenant and the tenant's documents were admitted into evidence.

The landlords submitted that they sent their hearing package to the tenant on November 30, 2019 via registered mail but that it was not picked up by the tenant. The landlord provided the registered mail tracking number as proof of service. The tenant stated that she was unaware that registered mail was sent to her since her mail is delivered to a mailbox at the landlord's residence on the property and the landlord has to give her mail but that he did not give her the registered mail. The landlord responded by explaining

that mail for three living units on the property is delivered to a communal mailbox and that the tenant ordinarily retrieves her mail from the mailbox. I found it unnecessary to give further consideration to whether the registered mail was sufficiently delivered to the tenant by way of the communal mailbox since a landlord's application for an Order of Possession is unnecessary where a tenant files to dispute a notice to end tenancy. I explained to the parties that if the tenant's application to cancel the 1 Month Notice is dismissed, the landlords may be entitled to receive an Order of Possession.

The landlords served an evidence package to the tenant by posting it on the door of the rental unit on January 3, 2020. The tenant confirmed receipt of the evidence package and I admitted it into evidence.

2. Tenant's request for extension of time to file to dispute the 1 Month Notice

The tenant submitted that she received the subject 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on November 4, 2019. As provided under section 47 of the Act, a tenant in receipt of a 1 Month Notice has 10 days from the date they receive the notice to file to dispute it; otherwise, the tenant is conclusively presumed to have accepted the tenancy will end and vacate the rental unit by the effective date. The tenant filed this Application for Dispute Resolution to dispute the 1 Month Notice on November 28, 2019 and well over her 10 day time limit.

Section 66 of the Act permits the Director, as delegated to an Arbitrator, the ability to extend a deadline in "exceptional circumstances".

Residential Tenancy Branch Policy Guideline 36 provides information and examples of exceptional circumstances. The policy guideline provides in part:

Exceptional Circumstances

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 very 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In requesting an extension, applicants are required to describe the "exceptional circumstance" that resulted in the late filing. In filing this Application for Dispute Resolution, the tenant submitted the following reason(s) for seeking the extension:

I did apply for dispute resolution regarding a notice that was not valid RTB File # [file number omitted for privacy] and assumed that this One Month Notice to End Tenancy for Cause was dealt with at that time I found out from the landlord that this eviction notice is still in effect when landlord reminded of a move out date. This notice is dated October 31, 2019 and the move out date is November 31, 2019. I received this notice on November 4, 2019. My mail is delivered to landlord.

The tenant had filed a previous Application for Dispute Resolution [*file number provided on cover page of this decision*] seeking to dispute a 1 Month Notice to End Tenancy for Cause received on September 2, 2020. A hearing was scheduled for November 15, 2019 via teleconference call. The tenant did not file an Amendment to an Application for Dispute Resolution to request cancellation of the 1 Month Notice to End Tenancy for Cause she received on November 4, 2019. Nor, did the tenant appear for the hearing of November 15, 2019 to orally request an amendment to deal with the 1 Month Notice received November 4, 2019. The landlord did appear for the November 15, 2019 hearing but a respondent cannot request an amendment to add another issue or notice to end tenancy without consent of the applicant and since the tenant did not appear an amendment could not be made to her application. The Arbitrator presiding over the November 15, 2019 hearing found:

Section 55(1) of the *Act* confirms that when a tenant's application to dispute a notice to end a tenancy is dismissed, and the notice complies with section 52 of the *Act*, the director must grant to the landlord an order of possession. However, in this case, the Landlord confirmed the disputed notice was hand-written and did not comply with section 52 of the *Act* which stipulates that a landlord's notice to end tenancy must be in the approved form. Although the Landlord subsequently issued what appears to be a valid notice to end tenancy, the validity of that notice was not before me. Therefore, I decline to grant an order of possession to the Landlord under section 55(1) of the *Act*. The Landlord is at liberty to apply for an order of possession based on any undisputed notices to end tenancy that have been issued.

[My emphasis underlined]

The tenant testified that on November 15, 2019 she and her legal representative had attempted to connect to the teleconference call but they were unsuccessful. At one point, the tenant indicated that they may not have "made it in time". The tenant and her legal representative stated they waited for nearly an hour on the line but remained on hold before hanging up. The tenant and the legal representative did not indicate what time they attempted to connect to the hearing and if they attempted to connect after the Arbitrator had already hung up then they would remain on hold.

The tenant and her legal representative acknowledge they did not contact the Residential Tenancy Branch to advise of any problem connecting to the teleconference call at the scheduled time. Nor, did they make any enquiries or proceed to file an Application for Review Consideration on the basis they were "unable to attend" the

November 15, 2019 hearing due to circumstances beyond their control. Where a participant is unable to connect to a hearing due to technical difficulties with the teleconference system, it is expected that the participant will contact the Residential Tenancy Branch immediately and the Residential Tenancy Branch may investigate the system, including pulling the telephone records. Rather, in this case, the tenant and her legal representative explained that they waited until the decision of November 15, 2019 was rendered and they “assumed” it meant the 1 Month Notice received November 4, 2019 was dismissed. However, when I read the decision of November 15, 2019 it is clear that the Arbitrator did not consider or cancel the 1 Month Notice received November 4, 2019 because it was not before him since the tenant did not bring it forward for his consideration.

Based on the circumstances before me, I find the tenant has not demonstrated that the reason for filing this Application for Dispute Resolution late was due to “exceptional circumstances”. The tenant had the ability to amend the previous Application for Dispute Resolution to deal with the 1 Month Notice received on November 4, 2019 but she did not pursue that option. The tenant did not appear for the previous hearing at the scheduled time to request an amendment orally and the tenant did not pursue an Application for Review Consideration if she was unable to attend the November 15, 2019 hearing due to being unable to attend the hearing at the scheduled time due to circumstances beyond her control. Nor, did the tenant file a new Application for Dispute Resolution to dispute the 1 Month Notice within 10 days of November 4, 2019. Rather, I am of the view the reason for the late filing is the tenant’s failure to exercise due diligence by exploring all available options to her to dispute the 1 Month Notice within time and that is not a basis for granting an extension under section 66 of the Act. Therefore, I deny the tenant’s request for an extension.

Having denied the tenant’s request for an extension, the 1 Month Notice she received on November 4, 2019 shall be treated as undisputed with the time limit for doing so. Accordingly, I find the tenant is conclusively presumed to have accepted the tenancy would end pursuant to the 1 Month Notice she received on November 4, 2019, as provided under section 47(5) of the Act, and the tenant’s request for cancellation of the notice is dismissed.

Having dismissed the tenant’s request for cancellation of the 1 Month Notice I proceed to consider whether the landlords are entitled to an Order of Possession under section 55(1) of the Act.

3. Other remedies sought by tenant

For reasons provided in this decision, I have found the tenancy has ended and the majority of the other remedies sought by the tenant became moot where the tenancy has ended. As such, I did not consider any of the other remedies sought by the tenant. With respect to the tenant's monetary claim, I did not explore the basis for any monetary claim as I severed it pursuant to Rule 2.3 of the Rules of Procedure. The tenant's monetary claim is dismissed with leave to reapply.

Issue(s) to be Decided

Are the landlord's entitled to an Order of Possession under section 55(1) of the Act?

Background and Evidence

Both parties submitted an identical copy of a 1 Month Notice to End Tenancy for Cause dated October 31, 2019. The tenant received the 1 Month Notice on November 4, 2019. The tenant filed to dispute the 1 Month Notice, but her request was dismissed as explained above.

Upon review of the 1 Month Notice, I note that it is in the approved form and is duly completed, including names of the parties, the address of the rental unit, the landlord's signature, date of signature, effective date, and reasons for ending the tenancy. The Notice has a stated effective date of November 31, 2019.

The landlord confirmed that he received monies from the tenant that he accepted for use and occupancy for the month of January 2020.

Analysis

Section Section 55(1) of the Act provides 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.

In this case, I have dismissed the tenant's application to cancel the 1 Month Notice. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Having heard the tenant received the 1 Month Notice on November 4, 2019 the effective date automatically changes to comply with the Act and is automatically corrected to read December 31, 2019.

In light of the above, I find the tenancy ended on December 31, 2019 and the landlords are entitled to an Order of Possession under section 55(1).

Considering the landlords have accepted monies for occupation of the rental unit until January 31, 2020, I provide to the landlords with this decision an Order of Possession with an effective date of January 31, 2020.

Conclusion

The tenant's request for cancellation of the 1 Month Notice is dismissed and the landlords are provided an Order of Possession effective January 31, 2020.

The other remedies sought by the tenant are moot since the tenancy has already ended with the exception of the monetary claim, which I have dismissed with leave; however, that does not extend the tenant's time limit for vacating the rental unit.

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 17, 2020

Residential Tenancy Branch