



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant (the “Application”). The Tenant applied as follows:

- For return of double the security deposit
- For compensation for monetary loss or other money owed
- To recover the filing fee

This matter came before me March 18, 2021 and an Interim Decision was issued March 22, 2021. This decision should be read with the Interim Decision.

The Tenant appeared at the adjourned hearing. The Landlords appeared at the adjourned hearing with Legal Counsel.

The Tenant advised that he tried to get assistance for the adjourned hearing but was unable to do so. The Tenant said he was prepared to deal with the limitation period issue.

I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Landlords provided affirmed testimony.

Preliminary Matter – Limitation Period

An issue arose in this matter due to the two-year limitation period set out in section 60 of the *Residential Tenancy Act* (the “Act”). The parties disagree about whether the tenancy ended November 13 or 14, 2018. The Application was filed November 16, 2020 and completed November 27, 2020. I heard the parties on the limitation period issue.

The parties agree there was a tenancy agreement between them which started October 01, 2009.

The Tenant made the following submissions on the limitation period issue. The tenancy ended November 14, 2018. His new landlord wrote a letter in relation to when his new tenancy started which is in evidence. He previously wrote in a letter to the Landlords that the tenancy ended November 13, 2018; however, this was a mistake. He stated the November 13, 2018 date because this was the date on the security deposit cheque. The security deposit cheque was dated November 13, 2018, while he was still living in the rental unit. His new tenancy agreement confirmed he moved out of the rental unit November 14, 2018. An Information Officer with the RTB wrote the Tenant an email which mentions having done further investigation and noting that the tenancy ended November 14, 2018.

The Tenant made the following further submissions. The Application was filed November 16, 2020. The RTB office was closed November 14 and 15, 2020 because it was a weekend. The reason for the two-year delay in filing the Application is explained in the materials submitted. The letter from his doctor confirms the difficulties he was having around November 14th and 26th of 2020.

The Tenant confirmed he is relying on his own testimony, his Affidavit in evidence, the letter from his new landlord in evidence and the email from an RTB Information Officer for his position that the tenancy ended November 14, 2020.

The Tenant took the position that the Application was filed in time. The Tenant asked that the limitation period be extended if I find the Application was not filed in time. The Tenant confirmed he is relying on the doctor’s note in evidence as a basis for extending the limitation period.

Legal Counsel for the Landlords made the following submissions on the limitation period issue. The Tenant's own evidence including the security deposit cheque, letter from the Tenant dated April 11, 2020 and Returned Item Notice indicates that the tenancy ended November 13, 2018. The move-out inspection had been done by November 13, 2018. The Landlords would not have issued the security deposit cheque before the tenancy ended. None of the Tenant's evidence shows that the tenancy ended November 14, 2018.

Legal Counsel for the Landlords made the following further submissions. The Tenant says the Application was filed November 16, 2020, which is after the time limit for filing. The filing date on the Notice of Dispute Resolution is November 27, 2020. The Tenant was fully aware of the claims at the end of the tenancy and there is no reason the Tenant could not have pursued the claims earlier. The doctor's note submitted indicates that the Tenant has general health issues but does not address why the Tenant could not meet the limitation period. The Tenant sent letters and arguments to the Landlords and therefore was capable of filing the Application on time. The Tenant had ample time and opportunity to file the Application.

Landlord H.P. testified that the tenancy ended November 13, 2018 and stated that the Landlords would not have issued a security deposit cheque prior to the end of the tenancy because they had had numerous issues with the Tenant.

In reply, the Tenant testified that the return of the security deposit was dealt with in a settlement agreement between the parties.

Decision

I provided a summary of my decision during the hearing. The following are the full reasons for my decision.

Pursuant to rule 6.6 of the Rules, I find the Tenant as applicant has the onus to prove the Application was filed within the two-year limitation period.

The parties disagree about when the tenancy ended. Therefore, I have considered the documentary evidence before me in relation to the end of the tenancy which includes:

- The Affidavit of the Tenant
- A letter from the Tenant's new landlord about when the Tenant moved into a new rental unit

- The security deposit cheque dated November 13, 2018
- A letter from the Tenant to Landlord H.P. dated April 11, 2020 stating that the Tenant moved out of the rental unit November 13, 2018

I do not find the Tenant's own Affidavit to be compelling corroborative evidence as it is the Tenant's own testimony in a different form.

I do not find the letter from the Tenant's new landlord to be compelling evidence that the tenancy ended November 14, 2018. The letter does not address when the tenancy ended. The letter addresses when the Tenant moved into a new rental unit. I am not satisfied based on the evidence provided that the tenancy ended on the same date the Tenant moved into a new rental unit. Nor do I find this to be an obvious conclusion.

I find the security deposit cheque to be compelling evidence of the date the tenancy ended. I find it unlikely that the Landlords would have issued the security deposit cheque prior to the end date of the tenancy as the entire purpose of a security deposit is for a landlord to hold it until the tenancy ends and the landlord can determine whether the tenant owes the landlord for any outstanding issues. The security deposit cheque is dated November 13, 2018 and I accept that the tenancy was over on this date.

I also note that the Tenant's letter to Landlord H.P. dated April 11, 2020 supports that the tenancy ended November 13, 2018.

I am satisfied the tenancy ended November 13, 2018. I find the security deposit cheque to be the most reliable and credible evidence of the end date of the tenancy.

Section 60 of the *Act* states:

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make

an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Pursuant to section 60 of the *Act*, the Tenant had until November 13, 2020 to file the Application. November 13, 2020 was a Friday and the RTB office was open.

I accept for the purposes of this decision that the Tenant filed the Application November 16, 2020. However, this was past the limitation period.

Section 66(1) of the *Act* states:

66 (1) The director may extend a time limit established by this Act **only in exceptional circumstances**, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review]. (emphasis added)

Policy Guideline 36 deals with extending a time period and states:

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

Pursuant to rule 6.6 of the Rules, I find the Tenant has the onus to prove that the limitation period should be extended given it is the Tenant seeking this.

The Tenant relied on the doctor's note in evidence to support an extension of the limitation period. The Tenant also provided some testimony relevant to this point and has made references relevant to this point in the materials submitted.

I declined to extend the limitation period for the following reasons. Two years is a lengthy period of time. To extend the two-year limitation period, I would expect to see compelling detailed documentary evidence showing that the applicant was unable to file the Application for Dispute Resolution within the two-year limitation period. I would also expect to see compelling detailed documentary evidence showing that the applicant was unable to arrange for someone to assist them with filing the Application for Dispute Resolution within the two-year limitation period.

The only documentary evidence submitted to support extending the limitation period is the doctor's note. The doctor's note is dated February 16, 2021, well after the relevant date of November 13, 2020. The doctor's note is not detailed. The doctor makes assertions without explaining the basis for the assertions. I do not find the doctor's note

to be compelling detailed evidence showing that the Tenant was unable to file the Application within the limitation period.

The Tenant has not submitted sufficient evidence showing that he was unable to arrange for someone to assist him with filing the Application for Dispute Resolution within the two-year limitation period.

In the absence of further evidence, I am not satisfied that there is compelling detailed documentary evidence before me to support extending the two-year limitation period. In the absence of further evidence, the Tenant has failed to prove the following points outlined in Policy Guideline 36:

- That the Tenant did not wilfully fail to comply with the relevant time limit
- That the Tenant had a bona fide intent to comply with the relevant time limit
- That the Tenant took reasonable and appropriate steps to comply with the relevant time limit
- That the failure to meet the relevant time limit was not caused or contributed to by the conduct of the Tenant
- That the Tenant has brought the application as soon as practical under the circumstances

Given the above, I find the Application was filed outside the two-year limitation period. I am not satisfied there are exceptional circumstances which justify extending the two-year limitation period and therefore decline to extend the limitation period. Given this, the Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: April 14, 2021

Residential Tenancy Branch