



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to dispute a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 6, 2021, and to request more time to dispute the Notice.

Only the landlord appeared. Neither of the named tenants appeared at the hearing, although this hearing was scheduled at their request. The tenants were also sent an email reminder of the hearing from the Residential Tenancy Branch on April 26, 2021, to the email address provided by the tenants for service.

Issues to be Decided

Should the tenants be allowed more time to dispute the Notice?
Should the Notice be cancelled?

Background and Evidence

The tenancy began on January 15, 2016. Rent in the amount of \$1,026.00 was payable on the first of each month. A security deposit of \$470.00 and a pet damage deposit of \$470.00 were paid by the tenants.

The tenants submit in their application that this is the same matter that was heard on January 4, 2021, and those matters were resolved. The tenant’s provided a file number for my review and consideration which I have noted the file number on the covering page of this decision.

I note that that statement is false, as the decision of January 4, 2021, reads as follows:

‘It was apparent that the Notice in question had failed to provide any particulars of the alleged late payment of rent in the “Details of Dispute” portion of the Notice. That information is a requirement of an enforceable one month Notice. Further, the landlord did not provide evidence regarding late rent payments until the day before this hearing contrary to Rule 3.15 of the Rules of Procedure. For those reasons the Notice in question was cancelled.

The landlord is at liberty to issue another, fully completed Notice if she wishes. She was informed of the landlord’s obligation to make clear to a tenant that late payment of rent is not acceptable.’

[My Emphasis Added.]

The tenants further submit in their application that the Notice, was left in the mailbox on January 29, 2021, even though it is dated January 6, 2021. Filed in evidence is a copy of the One Month Notice to End Tenancy for Cause, issued on January 6, 2021

The landlord testified that the tenants provided false information in their application for dispute resolution. The first issue was that this matter was already heard on January 4, 2021. The landlord stated that at the hearing, the Arbitrator did not consider the merits, because of a technical issue, and gave them permission to issue a new notice to end tenancy, which they did issue the Notice on January 6, 2021.

The landlord testified that they sent the Notice by registered mail to the tenants on January 6, 2021, which the Canada post tracking history shows it was delivered to the tenants on January 7, 2021. Filed in evidence is a copy of the Canada post tracking history which supports it was delivered to the tenants on January 7, 2021.

The landlord testified that it makes no sense that the tenants would allege in their application for dispute resolution that they got the Notice on January 29, 2021 and believe this is just a delay to the process. The landlord stated that the tenants have now failed to pay rent and they were issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which the rent was not paid.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I do not accept the tenants written submission that this matter was resolved on January 4, 2021. That is not supported by the decision made by the Arbitrator on that date. The landlord was granted permission to issue a new notice to end the tenancy, which is the matter before me.

I do not accept the tenants written submission that they received the Notice on January 29, 2021. I accept the landlord's evidence that the Notice was sent on January 6, 2021 and delivered to the tenants on January 7, 2021. This is supported by the Canada post history that shows it was delivered to the tenants on January 7, 2021 and left in their mailbox. I find it would be unreasonable for the tenants not to check their mail for 22 days, and even if that was the case, that was caused by their own actions and neglect. Neglect to pickup a package does not override the deemed service provision of the Act. I find the tenants were deemed served with the Notice on January 11, 2021, five days after the Notice was mailed.

I find the last day the tenants had to file their application for dispute resolution to dispute the Notice was on January 21, 2021. The tenants filed their application on January 30, 2021, and the filing fee was paid on February 1, 2021, both dates are outside the statutory time limit. I find the tenants did not comply with section 47(4) of the Act.

In this case, the tenants have requested more time to be allowed to dispute the Notice. Under section 66 of the Act, and extension of time can only be given if an exceptional circumstance occurred that prevented both of the tenants from making their application within the statutory time limits, such as hospitalization.

The tenants did not call into the hearing, to provide any evidence or supporting proof that an exceptional circumstance had occurred. Therefore, I cannot consider the tenants' request for more time. I dismiss the tenants' application to be allowed more time to dispute the Notice.

As the tenants have failed to appear, and I have found the tenants failed to dispute the Notice within the statutory time limit, I find the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the Notice, which was March 1, 2021. I find the tenancy legally ended on March 1, 2021.

I find the Notice was completed in accordance with section 52 of the Act. I find the landlord has met their statutory requirements under the Act, to end the tenancy. As the effective date in the Notice, has passed and the tenants have failed to pay occupancy

rent, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants

The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants failed to appear to prove they have an exceptional circumstance that prevented them from filing their application for dispute resolution to dispute the Notice within the statutory time limit. The tenants' application is dismissed without leave to reapply.

The landlord is granted an order of possession, effective two days after service on the tenants.

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: April 29, 2021

Residential Tenancy Branch