



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kinsman Ravine Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”) to dispute a One Month Notice to End Tenancy for cause (the “Notice”), issued on January 29, 2021 and I need more time to dispute this notice

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed they were not making any unauthorized recording of the hearing.

In this case, the tenant has named their young child in their application for dispute resolution. The child is not a person that responsible for the term of the tenancy agreement. Therefore, I have removed EL from the style of cause.

At the outset of the hearing the tenant stated that the person that was to help them has been called away on an emergency. The tenant stated they are entitled to adjourn this matter.

The landlord’s objected to this matter being adjourned as this matter was filed in February 13, 2021, and the tenant was out of time to make this application and that this has been the second hearing scheduled for the same issue.

In this case, I do not find an adjournment is appropriate as there is no likelihood of a resolution. Further, I find it would be prejudicial to the landlord as the tenancy may have already ended pursuant to section 47(5) of the Act. Therefore, I decline to grant an adjournment.

Issues to be Decided

Should the tenant be given more time to dispute the Notice?

Should the Notice be upheld or cancelled?

Background and Evidence

The tenancy agreement shows that the tenancy began on April 1, 2015. Rent in the amount of \$1,209.00 was payable on the first of each month.. The tenants rent was geared to income and the tenant pays the difference between the allowable subsidies.

On September 2, 2020 the tenant filed an application for dispute resolution to cancel a One Month Notice to End the Tenancy Cause and to be allowed more time to dispute the notice to end tenancy. The reasons in the notice to end tenancy that the tenant had breached clause 25 of the rental agreement which states "Pets shall Not be kept on the Premise or Property. That matter was withdrawn by consent as the tenant had agreed to remove the unauthorized pets from their residence. I have noted the file number on the covering page of this Decision.

The first issue that I must determine is whether the tenant should be granted more time to dispute the One Month Notice to End Tenancy for Cause (the "Notice"), issued and received by the tenant on January 29, 2021. Under the Act, the tenant had 10 days to make their application for dispute resolution, I find the last day the tenant had to make their application was February 8, 2021. The tenant's application was submitted on February 12, 2021, and the required documents for the fee were not provided until February 13, 2021. Both dates are outside the statutory time limit.

The tenant testified that they did not properly read the Notice. The tenant stated a few months earlier they had a nervous breakdown. The tenant stated that they were not in the hospitable during the time they had to dispute the Notice.

The tenant testified that they had agreed in September 2020 to remove the pet; however, it was returned to them shortly afterward and that they are prepared to rehome the pet again.

The landlord's agent testified that they are not prepared to cancel the Notice, as they had already done that in the past and the tenant clearly new that they would be served with another notice to end tenancy if they breached their tenancy agreement again.

Filed in evidence is a signed letter by both parties dated October 9, 2020, which reads as follows,

"The eviction notice issued because Ms. ... had two cats living in her suite causing a "Breach of a Material Tern of her tenancy. Ms... has chosen to willing rehome her two cats allowing her to remain a resident at ... We understand and accept Ms. ... cancelling the Dispute Resolution Hearing scheduled for October 16, 2020"

[Reproduced as written.]

Filed in evidence is a handwritten letter of the tenant dated October 9, 2020, which reads as follows,

"Pets removed upon requested as of October 2, 2020. Pets being house across the street at my friends. Aware not allowed pets"

[Reproduced as written.]

Filed in evidence is a picture of a cat in the tenant's rental unit dated January 29, 2021.

Analysis

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

Under section 47 (4) of the Act, A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Section 47 (5) of the Act states, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b)must vacate the rental unit by that date.

Section 66 (1) of the Act, states, the director may extend a time limit established by this Act **only in exceptional circumstances**.

In this case, I am not satisfied that the tenant has provided sufficient evidence to prove they had an exception circumstance that prevented them from making their application within the statutory time limit as their last day to make their application for dispute resolution was February 8, 2021 and it was not filed until February 13, 2021. Reading the Notice was within their control. While I accept the tenant may have health issues, there was no evidence to support that this was directly related to them making their application late, such as being hospitalized. Therefore, I find I cannot grant the tenant's application for more time to dispute the Notice. The tenant's application is dismissed without leave to reapply.

Although I have not granted the tenant more time to make their application to cancel the Notice. Even, if more time was granted the tenant would not have been successful in cancelling the Notice, as they admitted they had taken the pet back onto the property, after they had agreed to rehome the pet and were aware that they were not allowed pets. This was as a breach of their tenancy agreement and the prior hearing was cancelled on that basis of the tenant's compliance. Simply because the rehoming did not work out as anticipated, the tenant did not have the right to bring the pet back into the premises, that was a personal choice of the tenant knowingly breaching the tenancy agreement.

Although I have dismissed the tenant's application, I must determine whether the landlord has met the statutory requirements under the Act to end the tenancy.

I accept the evidence of the parties, that the Notice was completed in accordance with Part 4 of the Act; How to End a Tenancy, pursuant to section 47 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the proper form and meets the statutory requirements under section 52 of the Act to the form and content.

Further, I accept the evidence of the tenant that they were served with the Notice in compliance with the service provisions under the Act, as the tenant acknowledged service of the Notice in their application.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act on how to end a tenancy. The Notice was issued in the proper form and content in compliance section 52 of the Act and was served upon the tenant. Therefore, I find the Notice is valid and must be upheld.

Since the tenant's application was dismissed, and I have found the landlord has met the statutory requirements under the Act to end the tenancy. I find the tenancy legally ended on February 28, 2021, and the tenant is overholding the premises. I find the landlord is entitled to an order of possession pursuant to section 55 of the Act.

In this case, the landlord has agreed to give the tenant until June 30, 2021, to vacate the premises, if rent is paid for June 2021. I find it reasonable under these circumstances to grant the landlord two separate orders of possession.

Should the tenant fail pay occupancy rent for June 2021, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. If rent is paid, this order has no force or effect. The tenant will have until June 30, 2021 to vacate..

I find the landlord is entitled to an order of possession effective on June 30, 2021. A copy of this order must be served upon the tenant. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to be allowed more time to dispute the Notice is dismissed. The landlord is granted two orders of possession in the above terms. The landlord is granted an order of possession.

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: May 18, 2021

Residential Tenancy Branch