Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RP, CNL-4M-MT, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for repairs to be made to the unit, site or property pursuant to section 32;
- an order to cancel a 4 Month Notice to End Tenancy for Demolition or Conversion pursuant to section 49;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing accompanied by a supporter, TW. The landlord was represented at the hearing by agents, AG and JG ("landlord"). Also present were property managers RC and KP. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue – tenant's request to extend time to make application to dispute a notice to end tenancy

At the commencement of the hearing, I asked the tenant what exceptional circumstances she had that would allow me to extend the time to make the application to dispute the notice to end tenancy.

The landlord testified that she sent the notice to end tenancy via registered mail on December 31, 2021, and provided a tracking number for the mailing, recorded on the cover page of this decision. The landlord also provided a delivery confirmation certificate that indicates the tenant signed for the package on January 13, 2022.

The tenant filed an application to dispute the notice to end tenancy on April 29th and paid for the filing on May 2nd. Pursuant to Rule 2.6, the application is deemed to have been made on May 2nd, the date the fee was paid. I note that this is 109 days after the date she received the notice to end tenancy.

In response to my inquiry, the tenant gave the following testimony. She had been "in and out" of hospital for medical reasons around the time she was served with the notice to end tenancy. The tenant testified that she had been in a care home, then the hospital then back home for a while, then back in the hospital. She was not in the hospital the entire 30 days after being served with the notice to end tenancy. Immediately after receiving the notice to end tenancy, the tenant contacted her health care team, and they assisted her. They took over the filing of the evidence and the tenant forwarded all her emails to them as she wasn't capable of handling it herself.

The vocational counsellor attending with the tenant gave the following testimony. She has access to the tenant's file and could provide me with dates the tenant was in the hospital, however she doesn't have that information before her for this hearing. When the tenant got the notice to end tenancy, the tenant called her mental health team, seeking their assistance and one of her colleagues helped the tenant file the application to dispute it.

When I asked the vocational officer why they didn't file an application to dispute the notice to end tenancy within 30 days of the tenant receiving it, the officer responded saying that they were unsure about whether the tenant would be able to live safely on her own. They didn't know if the tenant would require supportive housing rather than regular market housing. Nobody filed an application to protect this tenancy because the team was unsure the tenant would be coming out of their care.

Analysis

Based on the documentary evidence before me, I am satisfied the tenant was served with the landlord's 4 Month Notice to End Tenancy for Demolition or Conversion on January 13, 2022, pursuant to sections 88 and 90 of the *Act*. Pursuant to section 49(8)(b), the tenant had 30 days to file an application to dispute it. The tenant filed the application to dispute the notice on May 2, 2022, the day the application fee was paid, pursuant to rule 2.6 of the Residential Tenancy Branch Rules of Procedure.

An arbitrator's ability to extend the time to make an application to dispute a notice to end tenancy is explored in Residential Tenancy Branch Policy Guideline PG-36 [Extending a Time Period]. (reprinted below)

> The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances.*** An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.
>
> **Exceptional Circumstances**
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> 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.
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> Some examples of what might not be considered "exceptional" circumstances include:
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> - 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
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> 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 the matter before me, the tenant acknowledged that she was “in and out” of the hospital in the days after she received the notice to end tenancy. The vocational officer attending the hearing with the tenant testified that she has records of when the tenant came to the hospital and the discharge dates but didn’t provide them for this hearing. As a result, I find that the tenant was not in the hospital for the full 30 days following receipt of the notice to end tenancy. I find the delay in filing was not due to the tenant being in the hospital and being prevented from accessing resources to assist her in disputing it.

The application to dispute the notice to end tenancy was filed on May 2, 2022, 109 days after receiving it. I was given testimony from the vocational officer that the tenant sought the assistance of her mental health team in disputing the notice to end tenancy immediately after she received it. The delay in making the application was because the tenant’s mental health team wasn’t sure the tenant would be able to return to unassisted living in the community. Instead of filing a dispute to the landlord’s notice and preserve the tenant’s ability to present an argument against the landlord’s decision to use the rental unit as housing for a resident manager, the tenant’s mental health team simply allowed the 30-day time frame to lapse. I note here that 30 days from receiving the

notice to end tenancy is February 13, 2022, and the tenant's team filed the application close to two and a half months after that date.

To be clear, the tenant's mental health team remained uncommitted to disputing the landlord's notice, even though they acknowledged the tenant gave it to them immediately after she received it. This lack of commitment to file a dispute and wait until they decide if the tenant had the capability to continue living in market housing was the primary reason for failing to file the dispute within the 30 days as required under the legislation. This is not, in my opinion, a strong or compelling reason to delay filing the application. Consequently, I find under the circumstances, that there is a lack of an exceptional circumstance that would allow me to extend the time to dispute the landlord's notice to end tenancy.

Section 49(7) states that a notice to end tenancy must comply with the form and content provisions as prescribed under section 52 of the *Act*. I have examined the landlord's notice to end tenancy and I find it complies with the form and content provisions. I find the tenant failed to file the application to dispute the landlord's notice to end tenancy within 30 days after the date she received it. Pursuant to section 49(9), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate it. As the effective date has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

As this tenancy is ending, the tenant's application seeking an order for regular repairs to the rental unit is dismissed without leave to reapply.

The tenant's filing fee will not be recovered as this application was not successful.

Conclusion

The tenant's application to dispute the notice to end tenancy was dismissed. Pursuant to section 55, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

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: August 30, 2022

Residential Tenancy Branch