



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 29, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order for the return of the security deposit

The Tenant attended the hearing. However, the Landlord did not. The Tenant provided a copy of the registered mail tracking information into evidence, and he stated this package was sent on February 4, 2022. Pursuant to section 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was mailed.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Jurisdiction

At the start of the hearing, the Tenant confirmed that he moved out of the rental unit on or around August 20, 2019. The Tenant did not complete and file his application until November 22, 2021. I note this application was filed 3 months after the expiration of the 2-year time limit to file the claim. I note the following portion of the Act:

Latest time application for dispute resolution can be made

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.

Director's orders: changing time limits

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].

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:

- (a) the extension is agreed to by the landlord;
- (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I note that section 66 of the Act states as follows:

Director's orders: changing time limits

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*].

Further, I turn to *Residential Tenancy Policy Guideline #36 – Extending a Time Period*.

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

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.

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 this case, the Tenant stated explained that he wasn't sure whether he had to file this application with the Courts, or with the RTB, and when he went to the Courts in February 2019, they did not accept his application. The Tenant was somewhat vague

but suggested that he first contacted RTB regarding this application sometime in late 2021. The Tenant stated that he was unable to apply within the 2-year limitation period because it was "COVID". The Tenant did not explain why this would have made him unable to file this application, with our office, given the RTB phone lines remained open during the COVID pandemic. I find the Tenant's explanation as to why he could not file his application in time lacked sufficient clarity and detail such that I could be satisfied that there were strong, compelling, and exceptional circumstances which prevented the Tenant from filing in time. I decline to extend the time limit, established under section 60(1) of the Act, as there is insufficient evidence to show that there were exceptional circumstances which prevented the Tenant from filing on time.

Since the time limit for filing this review has not been extended, I find this application has been filed late, and I decline jurisdiction to hear this matter, as section 60(1) of the Act excludes applications filed more than 2 years after the tenancy ended or was assigned.

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