



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 18, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 30, 2022 (the "Notice")
- For more time to dispute the Notice
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Tenant submitted the Notice and tenancy agreement as evidence. The Landlord submitted evidence. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and agreed there is no issue with service of the Tenant's evidence. The Tenant confirmed receipt of the Landlord's evidence on October 02, 2022.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be granted more time to dispute the Notice?
2. Should the Notice be cancelled?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The agreement is between prior owners of the rental unit and the Tenant. The tenancy started August 01, 2021, and was for a fixed term ending July 31, 2022. The tenancy then became a month-to-month tenancy. Rent is \$1,850.00 due on the first day of each month.

The Notice was submitted. The Notice has an effective date of August 31, 2022. The grounds for the Notice are that the rental unit will be occupied by the child of the Landlord or Landlord's spouse.

The parties agreed the Notice was served on the Tenant in person. The Landlord testified that the Notice was served June 30, 2022. The Tenant said they cannot remember when the Notice was served but that it was at the end of June.

The Tenant testified that they filed the Application late because they were going to discuss staying in the rental unit with the Landlord, but the Landlord would not discuss this further. The Tenant also testified that they do not know the system and were not aware of how to dispute the Notice until they had a discussion with their colleagues at which point they filed the dispute.

The Landlord testified as follows. The rental unit is in a house with an upper and lower suite. The Landlord lives in the upper suite with their family and the rental unit is the lower suite. The Landlord is sponsoring their mother who is going to come live with them October 20, 2022. Given the Landlord is sponsoring their mother, they are required to provide their mother accommodation and food. The Landlord has three children. The Landlord's daughter, who is 30 years old, is currently living in the upper suite but intends to move down to the rental unit when the Landlord's mother comes. The Landlord's daughter works from home some days and so will live and work in the lower suite.

The Tenant testified as follows. The Landlord has four bedrooms in the upper suite which is enough for their family. The Landlord originally said they would rent out the lower suite but later showed no interest in doing so. The Tenant agreed the Landlord has three children.

The Landlord sought an Order of Possession effective two days after service on the Tenant and said they will refund the Tenant any rent paid for days the Tenant no longer lives in the rental unit.

The Landlord submitted flight information for their mother which seems to indicate their mother will be in the country from October 20, 2022, to March 15, 2023. The Landlord submitted a signed statement from their daughter outlining their intention to move into the rental unit.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenant had 15 days from receipt of the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept that the Notice was served on the Tenant in person June 30, 2022, because the parties in effect agreed on this. The Tenant had until July 15, 2022, to dispute the Notice. The Tenant did not dispute the Notice until July 18, 2022, and therefore disputed the Notice late.

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)

RTB Policy Guideline 36 addresses 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

(emphasis added)

The Tenant has failed to prove exceptional circumstances resulted in them filing the Application late. It is not an exceptional circumstance that the Tenant wanted to talk to the Landlord about staying in the rental unit because this did not interfere at all with the Tenant filing the Application. The Tenant could have disputed the Notice within time and then continued to have discussions with the Landlord about staying in the rental unit. The Tenant also testified that they do not know the system and were not aware of how to dispute the Notice. As outlined above, this is not an exceptional circumstance. The Notice explains to the Tenant what they had to do to dispute the Notice. The Tenant only had to read the Notice to know how to dispute it. If the Tenant was unable to read or understand the Notice, the Tenant was required to get assistance with this.

Given the Tenant has failed to prove exceptional circumstances resulted in them filing the Application late, I decline to extend the timeline for disputing the Notice.

Section 49(9) of the *Act* states:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Given the Tenant did not dispute the Notice within time, section 49(9) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ended August 31, 2022, the effective date of the Notice. The Tenant was required to vacate the rental unit by August 31, 2022.

Given the above, I dismiss the Tenant's dispute of the Notice without leave to re-apply. Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and find it complies with section 52 in form and content as required by section 49(7) of the *Act*.

Given the above, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant pursuant to section 55(1) of the *Act*. If the Landlord enforces the Order of Possession such that the Tenant has paid rent for days they no longer live in the rental unit, the Landlord must refund the daily rent amount for days the Tenant no longer lives in the rental unit.

Given the Tenant was not successful in the Application, the Tenant is not entitled to recover the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: October 13, 2022

Residential Tenancy Branch