



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 2, 2017. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 66; and,
- cancellation of the Notice pursuant to section 47.

The Tenant attended the teleconference hearing and provided affirmed testimony; however, the Landlord did not. The Tenant testified that he personally posted the Notice of Dispute Resolution Proceeding and evidence package to the Landlord's front door at the address for service noted on the Notice on June 12, 2022. The Tenant stated he took a photo of this but did not provide it into evidence. I accept this affirmed testimony, and pursuant to section 89 and 90 of the Act, I find the Landlord is deemed to have received this package 3 days after it was posted, on June 15, 2022.

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.

Issue to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?

Background, Evidence, and Analysis

Application for More Time

I note the Tenant has applied for more time to make an application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

After reviewing the file before me, and the testimony provided by the Tenant, I note the Tenant stated that the Notice was issued on April 5, 2022, and the Tenant acknowledged receipt of the Notice on April 6, 2022. The Tenant stated that the effective date of the Notice was May 31, 2022, and it was issued for multiple reasons, all of which are baseless. The Tenant stated that after receiving the Notice, the Landlord asked him to help caretake for one of the different, adjoining, rental units, and it appeared the Landlord did not have any issue with the Tenant. The Tenant stated that he was made to believe by the Landlord that the Notice to End Tenancy for Cause was not being pursued. The Tenant also stated that he was unaware that there were timelines he had to comply with for disputing the Notice.

The Tenant stated that he has lived in this unit for over a decade, and pays low rent, so he believes the Landlord is trying to evict him to raise the rent, since he has done nothing wrong. The Tenant stated that the Landlord has also issued Notices to the other rental units as well since they are also paying below market rent.

I note that after receiving the Notice on April 6, 2022, the Tenant was only entitled to 10 days, until April 16, 2022, to dispute the Notice under the *Act*. I also note the Tenant did not file this application until May 26, 2022, which is approximately 1 month past the time

frame allowed under the Act. That being said, I note the Tenant did file the application prior to the effective date of the Notice, which is important because an extension of time to file the application cannot be granted beyond the effective date of the Notice. In any event, I find it would be confusing to be asked to help caretake another rental unit, which is a gesture of good faith and trust, after receiving this Notice in an attempt to end the tenancy. I accept that this unusual request and circumstance would have contributed to the Tenant not applying in time, as he may not have believed the Notice was being pursued any longer.

Having considered the above factors, I am satisfied that the circumstances were sufficiently unique and compelling as to warrant an extension of time to file this application to cancel the Notice. I grant an extension of time to file this application to cancel the Notice.

Notice to End Tenancy

In the matter before me, the Landlord has the onus of proof to prove that the Notice is valid. I find that the Landlord was properly served with the Notice of Dispute Resolution Proceeding and failed to attend the hearing to prove the allegation within the Notice.

The hearing began at 11:00 am on October, 7, 2022, and lasted for at least 10 minutes. However, the Landlord/respondent did not appear. Therefore, as the Landlord did not attend the hearing by 11:10 am on October 7, 2022, I cancel the Notice, dated April 5, 2022.

I Order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful.

The tenancy will continue until ended in accordance with the Act.

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: October 11, 2022