



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 15, 2022, by the tenant filed under the *Residential Tenancy Act* (the “Act”) to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on July 25, 2022 and request more time to dispute the 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.

In this case, I must consider first the tenants request to be allowed more time to dispute the Notice as the onus is on the tenant to prove they had an exceptional circumstance that prevented them from filing their application within the statutory time limit.

Issue(s) to be Decided

Should the tenant be granted more time to dispute the Notice?
Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2019. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenant

The tenant acknowledged that they received the Notice on August 1, 2022. The tenant stated that they did not dispute the Notice within the statutory time limit as they did not sufficiently read the Notice and was unaware of the time limit to dispute the Notice. Filed in evidence is a copy of the Notice.

Analysis

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

In this case, the tenant acknowledged they received the Notice on August 1, 2022. A copy of the Notice was submitted for my review and consideration. I find the Notice was completed in accordance with section 52 of the Act.

The tenant did not file their application for dispute resolution until September 15, 2022. I find the tenant did not file to dispute the Notice within the statutory time limit as their last days to dispute the Notice was on August 15, 2022.

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

Based on the testimony of the tenant, I find the tenant has failed to prove an exceptional circumstance occurred, such as being hospitalized, that prevented them from filing their application within the statutory time limit.

Clearly the tenant had to have known, if they read the Notice that they were required to dispute the Notice within 15 days of receiving it. How To Dispute the Notice, is written at the very top of the Notice. The Notice further informs the tenant if you do not apply within the required time limit, you are presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective date of the Notice, which was October 1, 2022. Therefore, I must dismiss the tenant's application to be allowed more time to dispute the Notice.

As result, I find I must dismiss the tenant's application to cancel the Notice as the tenant was conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and was required to vacate the rental unit on October 1, 2022,. I find the tenancy legally ended on October 1, 2022, and the tenant is overholding the rental unit on an occupancy basis.

As the tenancy has legally ended and I have dismissed the tenant's application to cancel the Notice, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At the end of the hearing, the parties agreed that the tenant has already received their compensation for receiving the Notice as the tenant did not pay rent for September 2022. The landlord agreed that they would not enforce the order of possession, until November 30, 2022, to give the tenant more time to vacate, only if the tenant pays the November 2022, rent in full on today's date, November 1, 2022.

Conclusion

The tenant's application to be allowed more time to dispute the Notice is dismissed. The tenant's application to cancel the Notice is dismissed. The tenant is not entitled to recover the cost of the filing fee. The landlord is entitled to 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: November 01, 2022

Residential Tenancy Branch