



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on June 23, 2022 (the “One-Month Notice”); and
- an order pursuant to s. 66 for a time extension to dispute the One-Month Notice.

M.L. appeared as the Tenant. The Tenant was joined by D.A. as his advocate.

The Tenant and his advocate affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant’s advocate advised that the Notice of Dispute Resolution was served on the Landlord via registered mail sent to the Landlord’s mailing address on July 22, 2022. The advocate further advised that the One-Month Notice, which was the only evidence provided by the Tenant, was also served at that time. I was provided a tracking number by the advocate, which is on the cover page of this decision. Review of the tracking information indicates it was received by the Landlord on July 25, 2022. I find that the Landlord was served with the Tenant’s application materials in accordance with s. 89 of the *Act* and was received by the Landlord on July 25, 2022 as confirmed by the Tenant’s proof of service.

A representative for the Landlord did not attend the hearing. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 11:17 AM without the Landlord’s participation.

Issues to be Decided

- 1) Should the Tenant be provided with a time extension to dispute the One-Month Notice?
- 2) Should the One-Month Notice be cancelled?
- 3) Is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Tenant confirmed, to the best of his recollection, the following details of the tenancy:

- He moved into the rental unit on or about January 1, 2005.
- Rent of \$475.00 is due on the first day of each month, though he is uncertain as the funds are paid by the government.
- A security deposit of \$250.00 was paid to the Landlord.

The Tenant confirmed receipt of the One-Month Notice on June 23, 2022. A copy of the One-Month Notice was provided to the Residential Tenancy Branch by the Tenant.

The Tenant testified that he is fearful of the Landlord and that he avoids interacting with the Landlord's representatives, whom he alleges are involved in criminal activity. The specifics of the Tenant's allegations are not relevant here. The Tenant further testified that he has mental health issues and that upon receipt of the One-Month Notice he was overcome with shock such that he was unable to file his dispute on time. The Tenant further testified that the a public holiday took place between the One-Month Notice being served and the deadline to dispute the notice.

The Tenant testified that should he be evicted he will likely be homeless and argued that the Landlord's actions with respect to ending the tenancy amounted to murder. The Tenant disputed that the One-Month Notice was properly issued.

The Tenant confirmed that he continues to reside within the rental unit.

Analysis

The Tenant seeks more time to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the two notices to end tenancy pursuant to ss. 47(1)(d)(ii) and 47(1)(d)(iii) of the *Act*. Upon receipt of a notice to end tenancy issued under s. 47, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

I accept the Tenant's undisputed evidence that he received the One-Month Notice on June 23, 2022. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application on July 7, 2022. The Tenant failed to file his application within the 10 days permitted for him to do so under s. 47(4) of the *Act*.

Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed.

Policy Guideline #36 provides the following guidance with respect to "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

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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

The Tenant advised that he has mental health issues and that he was shocked after receiving the One-Month Notice. I accept the Tenant's undisputed testimony that he does have mental health issues, which exacerbated the effect of receiving a notice from his landlord that the tenancy is to come to an end. I note the Landlord in question is a community housing organization such that I accept the Tenant is particularly vulnerable to homelessness. I further accept that given the risks the Tenant faces with respect to homelessness, it is prudent to take a flexible approach in the present circumstances as well. Given the particulars of this present dispute, I find that the Tenant has demonstrated exceptional circumstances are present in the form of his vulnerability to the shock of receiving a notice to end tenancy due to his mental illness.

Pursuant to s. 66 of the *Act*, I permit the Tenant additional time to file the dispute.

As noted above, when a tenant files to dispute a notice to end tenancy under s. 47, the onus rests on the respondent landlord to prove that it was properly issued. This can be seen by reference to Rule 6.6 of the Rules of Procedure. As the Landlord was served and failed to attend the hearing, I find that the Landlord has failed to prove that the One-Month Notice was properly issued.

The One-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Conclusion

I grant the Tenant the relief sought in his application and cancel the One-Month Notice. The tenancy shall continue until it is 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: November 28, 2022

Residential Tenancy Branch