



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

RTB-136

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: CNC, MT

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for additional time to do so. Both parties attended the hearing and had the opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The landlord served the tenant with a notice to end tenancy by placing the notice in the tenant's mailbox. The tenant is deemed to have received the notice on December 03, 2022 and made application on December 20, 2022, which is two days beyond the 15 day timeline that the tenant should have made application. The tenant has applied for additional time to make this application.

The tenant testified that he was in the hospital at the time the notice was served and made application upon being discharged from the hospital.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant had *exceptional circumstances* that prevented him from filing for dispute resolution within the legislated time limit.

Accordingly, I grant the tenant additional time to make application to dispute the notice to end tenancy for cause.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

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Background and Evidence

The tenancy began on October 15, 2020. The landlord stated that a term of the tenancy agreement does not permit smoking inside the building. The landlord testified that the tenant smokes on the balcony of his rental unit and despite verbal and written warnings, continues to do so. The tenant testified that he quit smoking prior to December 25, 2022.

On November 30, 2022, the landlord served the tenant with a notice to end tenancy for cause. The reason for the notice is that the tenant has breached a term of the tenancy agreement.

During the hearing the reasons for the notice were discussed at length. The parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the Arbitrator may assist the parties settle their dispute and if the parties settle their dispute during the resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute. Specifically, it was agreed that the landlord would withdraw the notice to end tenancy and allow the tenancy to continue on the following terms:

1. The tenant agreed to refrain from smoking on the balcony of the rental unit.
2. The tenant agreed to refrain from knocking on the doors of other residents of the building. The tenant also agreed to be mindful of the quiet enjoyment that the other occupants of the housing complex are entitled to.
3. The tenant agreed not to use illegal drugs.
4. The tenant accepts that if any further complaints are received by the landlord, the tenant will be served with a notice to end tenancy.
5. Both parties confirmed that they understood/agreed to the above terms

The tenant would be wise to abide with the terms of this agreement. I find it timely to put the tenant on notice that, if in the future another notice to end tenancy is issued, the record of this agreement would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the above terms.

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: January 23, 2023,

Residential Tenancy Branch
