



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy for landlord's use of the property. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy? Did the tenant dispute the notice to end tenancy in a timely manner?

Background and Evidence

The tenancy started on May 03, 2018. A tenancy agreement was filed into evidence. The current monthly rent is \$1,522.00 payable on the first of each month. On September 11, 2022, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property, by handing it over to the female tenant in person. The effective date of the notice is November 30, 2022. The reason the landlord gave the notice to the tenant is that the rental unit will be occupied by the landlord's child. The notice complied with section 52 of the *Residential Tenancy Act*.

The tenant disputed the notice on October 24, 2022. The tenant acknowledged that he was late disputing the notice and explained that his wife forgot to hand it over to him.

Analysis

The tenant received the notice to end tenancy on September 11, 2022, with an effective date of November 30, 2022. The tenant had 15 days from the date of receipt of the notice, to dispute the notice but made application to dispute it on October 24, 2022.

The tenant disputed the notice beyond the legislated time frame of 15 days. The tenant has applied for an extension of time to make application to dispute the notice,

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 dispute a notice to end tenancy in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented him from filing to dispute the notice to end tenancy within the legislated time limit and accordingly I dismiss the application.

Pursuant to section 49(8) of the *Residential Tenancy Act*, if a tenant has received a notice to end tenancy for landlord's use of property and does not make an application for dispute resolution within 15 days after receiving the notice, the tenant is conclusively presumed to have accepted that the **tenancy ends on the effective date of the notice** and must vacate the rental unit by that date.

Therefore, I find that the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective 2 days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The tenant's application for the recovery of the filing fee is dismissed.

Conclusion

The tenant's application is dismissed. I grant the landlord an order of possession effective two days after service on the tenant.

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: February 28, 2023

Residential Tenancy Branch