



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC-MT, CNL-MT

Introduction

The tenant applied on November 24, 2022 for the following claims under the *Residential Tenancy Act* (the “Act”):

- (i) an order cancelling a one month notice to end tenancy for cause (the “One Month Notice”) pursuant to section 47 of the Act;
- (ii) more time to dispute the One Month Notice pursuant to section 66 of the Act;
- (iii) an order cancelling a two month notice to end tenancy because the tenant no longer qualifies for subsidized rental unit (the “Two Month Notice”) pursuant to section 49 of the Act; and
- (iv) more time to dispute the Two Month Notice pursuant to section 66 of the Act.

The tenant’s mother attended the hearing as the tenant’s agent. The landlord did not attend. The tenant’s agent testified under oath that she served the Notice of Dispute Resolution Proceeding and evidence on the landlord in person in late November 2022. There is documentation from the landlord uploaded to the Residential Tenancy Branch on February 28, 2023 in response to the application.

Issue(s) to be Decided

1. Is the tenant entitled to more time to dispute the One Month Notice and the Two Month Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenant provided a copy of the One Month Notice signed by the landlord on June 29, 2022 and the Two Month Notice signed by the landlord on September 29, 2022. The tenant acknowledged that they did not file in time to dispute the One Month Notice or the Two Month Notice. This is because the tenant was under the custody of medical and psychiatric services and was not at the rental unit to receive the One Month Notice and the Two Month Notice.

Analysis

If a tenant does not dispute within the relevant time limits, they are presumed to have accepted the end of the tenancy and must vacate the rental unit. Section 66 of the Act, however, allows me to extend the time limit established by the Act in exceptional circumstances. RTB Policy Guideline #36 ("PG 36") clarifies the meaning of 'exceptional circumstances' stating that the reason for failing to do something at the time must be strong and compelling. In addition, PG 36 states that an example of an 'exceptional circumstance' would be if a party was in the hospital at all material times.

The tenant's agent provided a compelling reason for the late filing of the tenant's application. I am allowing the tenant's application for more time and do not find that the tenant is conclusively presumed to have accepted the end of the tenancy due to either the One Month Notice or the Two Month Notice.

I accept the tenant's testimony that the landlord was duly served with the tenant's application. As the onus is on the landlord to prove the validity of the One Month Notice as well as the Two Month Notice and the landlord has not attended the hearing to substantiate either, I am cancelling both the One Month Notice and the Two Month Notice.

Conclusion

The tenant's application is granted and 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: March 17, 2023

Residential Tenancy Branch