



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SETO INVESTMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, FFT

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated February 21, 2023 (the "One Month Notice") pursuant to section 47;
- more time to dispute the One Month Notice pursuant to section 66; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

No one attended this hearing on behalf of the Landlord. I left the teleconference hearing connection open until 11:23 am in order to enable a representative of the Landlord to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code (referenced on the cover page of this decision) had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

Preliminary Matter – Correction of Landlord's Postal Code

The Tenant confirmed that this application contained a typo in the Landlord's postal code. I have corrected this pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant testified that he served the Landlord with the notice of dispute resolution proceeding package (the “NDRP Package”) via registered mail. The Tenant submitted a receipt with tracking number in support of service (referenced on the cover page of this decision). Tracking records indicate that the package was sent on April 5, 2023 and delivered on April 14, 2023. The Tenant confirmed that he sent the registered mail package to the Landlord’s address stated on the One Month Notice. Based on the foregoing, I find the Landlord was served with the NDRP Package in accordance with section 89(1)(c) of the Act on April 14, 2023. I find the Landlord was sufficiently served with the One Month Notice pursuant to section 71(2) of the Act.

Having found the Landlord to be duly served with notice of this hearing, I directed that the hearing proceed in the absence of the Landlord.

Preliminary Matter – Tenant’s Claim for Extension of Time

The Tenant submitted this application on March 20, 2023. The Tenant acknowledged that he had received a copy of the One Month Notice attached to his door on February 24, 2023. The One Month Notice has an effective date of March 31, 2023.

Under section 47(4) of the Act, a tenant who receives a one month notice to end tenancy for cause has the right to dispute such a notice within 10 days after receiving it, unless the arbitrator extends that time limit pursuant to section 66 of the Act. If a tenant does not dispute the notice in time, they are presumed to have accepted the notice and must vacate the rental unit by the effective date.

Section 66(1) of the Act states that a time limit established by the Act may only be extended in “exceptional circumstances”. According to Residential Tenancy Branch Policy Guideline 36. Extending a Time Period (“Policy Guideline 36”), “exceptional” means that the reason for failing to do something at the time required is very strong and compelling. The party putting forward the reason must have some persuasive evidence to support the truthfulness of what is said.

Policy Guideline 36 provides the following as an example of what could be considered “exceptional circumstances”:

- the party was in the hospital at all material times

Policy Guideline 36 provides examples of what might not be considered “exceptional circumstances”:

- 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

(emphasis underlined)

The Tenant stated that his sister’s friend, J, was supposed to help the Tenant file an application to dispute the One Month Notice. The Tenant stated that he does not know J’s last name. According to the Tenant, he found out that J did not submit an application for him, so he had another friend help him drop off the application and explain why it was late. The Tenant stated that J took off and they can’t find J anymore. The Tenant stated that he paid J \$125.00 and J was supposed to advocate for him.

The Tenant’s application states as follows:

I hired some lady my relative referred me to help fill out papers she advised me she completed everything, I tried calling her with no response, and now I am terrified of losing my home. I am so stressed I haven’t been able to sleep and feel super anxious as I have hard time filling out paperwork.

The Tenant did not provide any documentary evidence in support of his claim for an extension of time to dispute the One Month Notice.

The Tenant stated that he still paying rent to the Landlord.

Based on the foregoing, I find the Tenant received the One Month Notice on February 24, 2023. I find the Tenant made this application before the effective date of the One Month Notice. However, I find the Tenant did not make this application until approximately two weeks after the 10-day deadline under section 47(4) of the Act had already passed.

I find the Tenant has not provided sufficient evidence of “exceptional circumstances” for extending the deadline to make this application under section 66(1) of the Act. I find the Tenant has not provided a clear timeline with dates to show that he had taken

reasonable steps to comply with the time limit and that this application was brought as soon as practical under the circumstances. I find the Tenant's testimony about J to be vague and not supported by any extrinsic evidence.

Accordingly, I decline to extend the time limit under section 66 of the Act for the Tenant to have more time to dispute the One Month Notice. Since the Tenant has not been successful in obtaining an extension of time, the Tenant's claims to dispute the One Month Notice and to recover the filing fee are also dismissed without leave to re-apply.

However, no one attended this hearing on behalf of the Landlord despite the Landlord having been duly served with notice of this hearing. As such, I also do not make any order ending the tenancy or grant an order of possession of the rental unit to the Landlord under the One Month Notice. I find the Landlord has not discharged its onus to prove that the One Month Notice complies with the requirements of the Act and that the One Month Notice should be upheld.

Conclusion

This application is dismissed in its entirety without leave to re-apply.

Since the Landlord did not attend this hearing to prove that the One Month Notice should be upheld, I also decline to order that the tenancy is ended or grant an order of possession to the Landlord under the One Month Notice.

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: May 25, 2023

Residential Tenancy Branch