



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Introduction

The Tenants made two applications for dispute resolution (one filed on September 19, 2023, and the other filed on September 26, 2023) in which they dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 47 of the *Residential Tenancy Act* ("Act"). One of the applications included a claim for an order of landlord compliance under section 62 of the Act, and both applications sought to recover the cost of the application fees under section 72 of the Act.

For the reasons that follow, both applications are dismissed without leave to reapply, the Notice is upheld, and the Landlord is issued an order of possession.

Preliminary Issue: Late Filing of Applications, Extenuating Circumstances, and Conclusive Presumption

The Tenants testified that they received a copy of the Notice in-person on August 12, 2023. A copy of the Notice was also attached to the door of the rental unit. The Tenant "J." also testified that he received a copy of the Notice around the "end of August."

A tenant who is served a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property must, if they wish to dispute the notice, file an application for dispute resolution "within 15 days after the date the tenant receives the notice" (see subsection 49(8)(a) of the Act, which is also stated in bold at the very top of the first page of the Notice).

In this case, Tenant S. filed her application more than a month after receiving the Notice, and Tenant J. did not file his application until almost a month after he purportedly received the Notice. (The Landlord testified that *both* Tenants were served with the Notice on August 12, 2023.)

If a tenant does not dispute a notice to end tenancy within the required 15-day period, then they are “conclusively presumed” to have accepted the validity of the notice.

An arbitrator may extend a time limit “only in exceptional circumstances,” under section 66(1) of the Act.

Tenant C. provided no testimony, argument, or submissions as to why he filed his application well beyond the 15-day time limit. Therefore, I cannot find that there are any exceptional circumstances that permit me to extend the time. Tenant C. is therefore conclusively presumed to have accepted the Notice.

Tenant S. testified that upon receiving the Notice she “went into a tailspin,” went to her MLA, “did not know what to do,” had difficulty sleeping and eating, suffered from anxiety and panic attacks, and went to her doctor. Her doctor provided a note (dated September 13, 2023) in which the Tenant is described as having anxiety disorder. The Tenant ended up talking to a friend who recommended that she seek assistance on the matter.

While it is not lost on me that anxiety can have a debilitating effect on people, what is not in evidence is anything explaining how the Tenant’s disorder prevented her from filing an application within the 15-day period. The Tenant S. took well over a month to file an application. Nor did the Tenant’s advocate make any argument or provide any submissions as to why or how Tenant S.’s anxiety disorder constituted an “exceptional circumstance” that might permit an extension of time. For this reason, it is my finding that there were no exceptional circumstances by which the 15-day time limit may be extended.

Therefore, the Tenants are both exclusively presumed to have accepted the Notice and they are required to vacate the rental unit.

Pursuant to section 55 of the Act, the Tenants' applications are both dismissed in their entirety without leave to reapply and the Landlord is granted an order of possession. A copy of the order of possession is issued with this Decision to the Landlord.

The Landlord must serve a copy of the order of possession upon both Tenants and the Tenants are required to vacate the rental unit no later than Sunday, January 14, 2024.

Given my findings above, it is therefore unnecessary for me to consider the underlying reason as to the issuing of the Notice, as the Notice appears to comply with section 52 of the Act in form and content.

Conclusion

The applications are dismissed without leave to reapply.

The tenancy is ordered ended effective January 14, 2024, and the Landlord is granted an order of possession.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 29, 2023

Residential Tenancy Branch