

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

### **Dispute Codes:**

*OPC, MT, CNC, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

On February 23, 2009, the landlord served the tenant with a Notice to End Tenancy (NTE) for cause. This matter was scheduled to be heard on May 12, 2009 but was adjourned at the landlord's request. The landlord agreed to give the tenant some more time to deal with and correct the cause of the NTE.

The landlord applied for an order of possession pursuant to Section 55. The tenant applied for dispute resolution but was not within the required time frame of ten days. The tenant applied for more time to dispute the NTE, pursuant to Section 66 and to cancel the NTE pursuant to Section 47. Both parties applied for the recovery of the filing fee pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant was represented by a friend who stated that she was not very familiar with the details of the tenant's case, but had agreed to represent the tenant as he was extremely ill and unable to be off his oxygen supply, long enough to participate in this hearing.

### **Issues to be decided**

Is the landlord entitled to an order of possession and to recover the fee to file this application? Is the tenant entitled to more time to apply to dispute the notice?

### **Background and Evidence**

The tenancy started approximately one year ago. The tenant stated that he received the NTE on March 05, 2009 and was unable to apply within the required time frame of ten days, due to his medical condition. The tenant suffers from a chronic condition which has worsened considerably in the last four to six months requiring him to spend a great deal of time in the hospital.

The landlord stated that other tenants have complained about the cleanliness of the tenant's rental unit and the odour that is emanating from it. In addition, upon inspection, the Fire Department informed the landlord, that the balcony and the inside of the unit were cluttered and posed a fire hazard. The landlord met with the tenant on January 23, 2009 to discuss these issues and agreed to give the tenant one month to rectify the problem.

A month later, the landlord visited the tenant to inspect the suite and found that there was no change in the condition of the suite. The landlord served the tenant with the NTE for cause. The landlord also gave the tenant additional time to clean up the unit by requesting an adjournment of the hearing that was scheduled for May 12, 2009.

As of this date, the tenant has made some efforts to clean up the unit, but the landlord stated that these efforts are not enough to warrant cancellation of the NTE. The landlord requested for an order of possession.

### **Analysis**

Based on the sworn testimony of the landlord, I find that the tenant received the NTE on March 05, 2009 and did not apply to dispute the NTE, within the statutorily prescribed time frame. Under section 66(1) of the Act I am empowered to extend the time limit in which to apply for dispute resolution only when the tenant has established that exceptional circumstances exist.

I find that tenant is in extremely poor health, has to spend a major amount of his time in the hospital and therefore was unable to apply for Dispute Resolution within the specified time frame.

Accordingly, I find that the tenant has exceptional circumstances for not doing so in a timely manner and therefore I grant the tenant an extension of time to apply for dispute resolution.

Based on the sworn testimony of both parties, I find that for medical reasons, without help, the tenant is physically incapable of maintaining the rental unit in a condition which would comply with the terms and conditions of the tenancy agreement.

The landlord has established cause to end the tenancy at this time, but is willing to let the tenancy continue until December 01, 2009, to give the tenant additional time to get help. The landlord has requested an order of possession for December 01, 2009 and agrees not to enforce this order if the tenant has obtained help and has brought his unit up to a reasonable standard of cleanliness.

### **Conclusion**

The notice to end tenancy is upheld and the tenant's application to cancel the notice is dismissed. I grant the landlord an order of possession effective on or before **1:00 pm on December, 01, 2009**. Both parties must bear the cost of filing their own application.

Dated June 18, 2009.

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Dispute Resolution Officer