



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

The tenant seeks to cancel a Notice to End Tenancy given for unpaid rent, she is also seeking more time to make this application and recovery of the filing fee.

The landlord did not appear at this hearing. Counsel for the tenant submitted that the application for dispute resolution and notice of hearing of this matter was served on the landlord.

The tenant gave evidence under oath.

Issue(s) to be Decided

Should the time for filing this application be extended? If so, should the Notice to End Tenancy for unpaid rent be cancelled and should the tenant recover the filing fee paid for this application from the landlord?

Background and Evidence

With respect to the application for to extend the time to make this application the tenant testified that she was served with the 10 day Notice to End Tenancy for unpaid rent on May 22, 2012. The tenant filed her application seeking to dispute that notice on May 29, 2012.

The tenant says that she did not file her application within the time limits prescribed in the Residential Tenancy Act and as noted on the Notice to End Tenancy itself because the Notice was in English and the tenant does not speak English.

Findings – Tenant’s Application for More Time

The Residential Tenancy Act provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- 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

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The tenant submits that the 10 day Notice to End Tenancy was in English and she does not speak English.

Based on this testimony I find that the tenant did not dispute the notice in time because she could not read it because she does not understand English. I do not find this to be an exceptional circumstance such that the legislated time frame for filing a dispute should be extended. However, with respect to the merit of the case, the tenant is seeking to cancel a Notice to End Tenancy given by the landlord for unpaid rent and in her written submissions the tenant admits that the rent has not been paid. The tenant submits that the rent has not been paid because the landlord owes the tenant monies.

The tenant also submits evidence that there is a Supreme Court action pending in this regard. However, I would, in any event, have to dismiss her application seeking to cancel that Notice to End Tenancy given for unpaid rent because the rent is in fact unpaid as there are no offsetting provisions under the Act for these circumstances.

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: June 21, 2012.

Residential Tenancy Branch