



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies for an order to cancel a one month Notice to End Tenancy.

Issue(s) to be decided

1. Should the tenant (who filed late) be allowed more time to make her application?
2. If so, should the notice be cancelled?

Background and Evidence

1. This tenancy began July 1, 2012. Monthly rent is \$700.00, and is paid directly by the government to the landlord.
2. On October 15, 2013 the tenant receive a one month Notice to End Tenancy from the landlord, to end the tenancy November 30, 2013.
3. The tenant filed a dispute of the Notice on November 15, 2013.
4. She testified that she does not have a car, and had to get a ride from someone else to Maple Ridge, to file her dispute. On one day the bridge was not open. She also did not read that a dispute had to be filed within 10 days of receiving the Notice.
5. The landlord testified he had received complaints from neighbours that items have gone missing, and that the tenant had stolen items. He also has been advised by the City that he will be fined unless he removes his tenant, as the suite is not a legal suite.
6. The tenant denies stealing anything.

Analysis

Section 47 of the Residential Tenancy Act deals with the issues related to landlords' notices given to end the tenancy for cause (as is the case in this dispute). Subsection 47(4) provides that the time limit to dispute such notice is within 10 days after the date the tenant receives the notice. In this case the tenant acknowledges receiving the notice on October 31, 2013. A dispute of the notice should have been filed by November 10, but in fact the dispute was not filed until November 15, 2013.

Section 47(5) provides that when a tenant does not dispute a notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date.

Section 66 of the *Residential Tenancy Act* provides that I have the authority to extend or modify a time limit only in exceptional circumstances. I note that in this case the application is made prior to the effective ending of the tenancy. Given that the tenant received the notice October 31, the effective end of tenancy is correctly November 30, 2013. Although more time was not formally applied for, I invited submissions from the tenant on that issue.

Policy guideline 36 provides guidance over the process of time extensions, and states the following:

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.

There are some key factors that I look to, in determining that exceptional circumstances do not exist in this case. Firstly, the tenant omitted to carefully read the Notice, to determine when her dispute had to be filed by. Secondly, the tenant provided no explanation why she did not take public transit to a government agency, or to the Residential tenancy Office. Thirdly, while submitting that she had to get a ride from someone else, the tenant did not explain why no ride could be found prior to November 15. Fourthly, even if the bridge was closed on one day, there were 9 other days within the notice period in which a dispute could have been filed.

In keeping with the policy guideline referred to above, these factors mitigate against a finding that exceptional circumstances exist, warranting no extension of the 10 day time

limit. It should have possible for the tenant, or an agent on her behalf) to have filed on-line, or to have filed in person at a government office or at the Residential Tenancy Office. A critical issue was clearly that the tenant failed to carefully read the notice, and determine the date by when a dispute had to be filed. As noted in the policy guideline, a failure to know the deadline date is not an exceptional circumstance.

Accordingly, I dismiss any claim for an extension of time to make this application, and consequently must also dismiss the balance of the tenant's claim. I need not address the merits of the reasons for giving the notice, ending the tenancy. Section 47(5) of the Residential Tenancy Act applies, and the tenant is conclusively presumed to have accepted that the tenancy has ended.

Given that rent has been accepted by the landlord until the end of January, I find that the ending of the tenancy is effective January 31, 2014.

Conclusion

The tenant's application is dismissed. The tenancy ends January 31, 2014.

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: January 13, 2014

Residential Tenancy Branch