



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH PARK HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for an order granting more time to make an application to cancel the Notice.

The tenant, her witness, and the landlord's agents attended the hearing, at which time the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- At the outset of the hearing, the landlord submitted that they served their documentary evidence to the tenant on September 17, 2014, by attaching the documents to the tenant's door; the tenant denied receiving the documents. The tenant also further clarified that she is frequently out of town on business.

I accept that the landlord served their evidence to the tenant as required; however, I also found that I did not require the landlord's evidence to make a determination on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to an order granting more time to make an application to cancel the Notice to end tenancy?

If so, is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The undisputed evidence showed that this tenancy began June 1, 2013 and monthly rent is \$320, due on the first day of the month.

The landlord submitted that the tenant was served a 1 Month Notice to End Tenancy for Cause by attaching it to the tenant's door on August 11, 2014, listing an effective move-out date of October 1, 2014. The cause listed on the Notice alleged that the tenant is repeatedly late in paying rent.

The Notice informed the tenant that she had 10 days within receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

As the tenant has requested more time to make an application to dispute the Notice, in response to my question, the tenant denied receiving the Notice on August 11, 2014, as she was temporarily away from the rental unit for business purposes. When asked for a specific date upon which she received the Notice, the tenant initially said perhaps August 21, 2014, then denied knowing the date she received the Notice. It is noted that the tenant, in her application, stated that she received the Notice on September 29, 2014; however, the tenant made her application to dispute the Notice on September 4, 2014.

Analysis

Section 90 of the Act states that documents served by attaching them to the the door are deemed delivered three days later. Although the deemed served provision is a rebuttable presumption, the person denying receiving the documents must be able to state clearly what date they did receive the documents. In this case, the tenant was unable to communicate the date she received the documents, and her statement on her application was contradictory to her other statements at the hearing.

As the tenant provided insufficient evidence as to when she received the Notice upon which her application is based, I am unable to consider her request for more time to file an application to dispute the Notice. Even if I accept the tenant's initial response, that she received the Notice on August 21, 2014, she would be required to file her application by September 2, 2014, the first business day after the expiration of the 10 days.

I therefore concluded that the tenant was deemed to have received the Notice by August 14, 2014, three days after the landlord attached the Notice to the door of the tenant's rental unit, and she was required to file her application by August 24, 2014; instead, the tenant's application was filed on September 4, 2014.

I also find that the tenant has failed to prove that exceptional circumstances prevented her from filing an application within the required time frame, as required by section 66(1) of the Act.

As a result, due to the tenant's failure to make a timely application as required by 47(5) of the Act, I therefore dismiss the tenant's application to cancel the 1 Month Notice dated and issued August 11, 2014, as she is conclusively presumed to have accepted that the tenancy ended on October 31, 2014, the effective date of the notice to end tenancy for cause.

I have not granted the landlord an order of possession for the rental unit as they did not make a request at the hearing.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: October 27, 2014

Residential Tenancy Branch

