



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kiwanis Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPT

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and granting the tenant an order of possession. Both parties appeared and had an opportunity to be heard. No issues regarding the exchange of evidence were raised.

The tenant had set out the landlord's name incorrectly. With the consent of all parties, the landlord's name was corrected. The correct name is reflected in the style of cause.

The tenant had also named an employee of the landlord as a respondent. Although there was conflict between the tenant and the employee, the employee was not the landlord. With the consent of all parties, including the employee, the employee is removed as a party. Once again, this change is reflected in the style of cause.

Issue(s) to be Decided

- Should the time for filing the application be extended?
- If so, is the 1 Month Notice to End Tenancy for Cause dated July 29, 2016 valid?

Background and Evidence

This month-to-month tenancy commenced May 1, 2015. The monthly rent of \$454.00 is due on the first day of the month. The landlord holds a security deposit of \$100.00.

On July 29, 2016, the landlord issued and personally served the tenant with a 1 Month Notice to End Tenancy for Cause. The notice received by the tenant contained the following information:

- "You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.”

This information is summary of sections 47(4) and (5) of the *Residential Tenancy Act*. The notice also provides the telephone numbers and web site where additional information may be obtained.

The tenant testified that sometime between receiving the notice and the August 19 hearing he contacted the Residential Tenancy Branch and was told he had the right to dispute the notice.

On August 2, 2016 the landlord filed an application for dispute resolution asking for an early end of the tenancy. The hearing of that application, the file number of which is noted on the front page of this decision, was heard on August 19. The landlord testified that at the close of that hearing the tenant asked the arbitrator about the notice to end tenancy. The arbitrator told the tenant that was a separate issue and that he better deal with it because the time had expired.

The tenant did not file this application until August 29. On the application the tenant wrote: “I have not come to you sooner because [the maintenance manager] told me I had no rights in this matter and I believed him until I was told different by another landlord. I wish to appeal the 10 day time period and this eviction.”

In the hearing the tenant said the conversation between he and the maintenance manager occurred sometime between receipt of the notice and the August 19 hearing. The maintenance manager denied any such conversation.

Both parties testified that after the August 19 hearing the tenant told the landlord on more than one occasion that he was moving out. The tenant said he was going to move out but then he talked to his old landlord, who told he had the right to appeal the notice to end tenancy.

When asked about his literacy skills the tenant replied that he is quite well educated.

When asked why he did not submit this application sooner the tenant responded that he suffers from depression and receiving the notice really affected him; slowing him down; and that he found the system difficult.

Analysis

Should the time for filing the application be extended?

Section 66 of the *Residential Tenancy Act* allows an arbitrator to extend or modify a time limit only in exceptional circumstances.

Residential Tenancy Policy Guideline 36: Extending a Time Period gives some directions as what will be considered “exceptional circumstances” and what will not. Some examples of what will not be considered exceptional are;

- 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 someone other than the Residential Tenancy Branch.

This list is almost identical to the reasons offered by the tenant for filing his application after the time limit had expired.

It is important to note that the tenant did obtain advice from the Residential Tenancy Branch prior to August 19 and advice from an arbitrator on August 19, yet still took no action until August 29.

I find that the tenant has not established exceptional circumstances for the delay in filing an application disputing the notice to end tenancy. The tenant’s application for an order extending the time is dismissed.

As he did not dispute the notice within the time required he is deemed to have accepted that the tenancy ended on the effective date of the notice, August 31, 2016.

The landlord has accepted the September and October rent but has given the tenant a receipt for each payment which makes it clear that each payment is only being accepted for use and occupancy.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord’s notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,

- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52, therefore, I grant the landlord an order of possession. As the rent has been paid to the end of October the order will be effective 1:00 pm, October 31, 2016.

Conclusion

For the reasons set out above the tenant's application is dismissed and the landlord has been granted an order of possession effective **1:00 pm, October 31, 2016**. The landlord must serve the tenant with a copy of this Decision and the Order. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.

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 13, 2016

Residential Tenancy Branch

