Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADKA TRADING AND FINANCE CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC MT SS OLC OPC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The landlord gave evidence they served a One Month Notice to End Tenancy for cause dated August 3, 2017 to be effective September 30, 2017. The tenant stated they served this Application dated September 13, 2017 by registered mail and the landlord agreed he received it but states he received no evidence to which the tenant refers. I find the Notice and Application were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To cancel a notice to end tenancy for cause pursuant to section 47;
b) To extend the time limitation to make this application pursuant to section 66 and Policy Guideline 16;;
c) To order the landlord to comply with section 29 of the Act and set limits on his entry; and
d) To recover the filing fee for this application.

Preliminary Issue: Extension of Time?

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 1, 2017 on a fixed term lease to June 30, 2018, rent is $1250 a month plus $150 in fees and utilities. No security deposit has been paid and the One Month Notice to End Tenancy was served for this reason.

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Section 66 of the Act sets out criteria for extending the time limit established by the Act in exceptional circumstances Section 66(3) provides an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice. I find the effective date on the Notice to End Tenancy was September 30, 2017 and the tenant filed his Application on September 13, 2017 so I find I have jurisdiction to consider the request.

Policy Guideline 36 clarifies exceptional circumstances as follows:

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.

In this case the tenant explained the circumstances for being late. He had previously filed an Application against this landlord regarding his security deposit at his previous unit number. He said he sent this Notice to End Tenancy to the Residential Tenancy Office expecting it would be joined with his other dispute to be heard in January 2018. Audit notes on file for the previous Application show that he called on September 12, 2017 to see if they had received his Notice to End Tenancy filed through Service BC. They informed him he must file an Application disputing his Notice to End Tenancy. He filed this Application on September 13, 2017 which I find is about 30 days too late.

I find the tenant's excuse for not filing on time was he did not know the correct procedure. He sent the Notice to End Tenancy to be placed in another file with a different unit number. I find he submitted insufficient evidence as to when he sent the Notice to End Tenancy and the audit notes indicate he did not call the office until September 12, 2017. I find this does not constitute exceptional circumstances. The Notice to End Tenancy states on its face that a tenant has the right to dispute this Notice **by filing an Application for Dispute Resolution at the Residential Tenancy Branch within 10 days** after receiving this Notice.

As part of my consideration on whether an extension of time should be granted due to exceptional circumstances, I considered the merits of the case.

I find the tenant's Application shows a pattern of delay. His tenancy commenced June 1, 2017 and had the requirement that the tenant pay a security deposit and postdated rent cheques (para. 8 and para 1 of the Addendum). He did not provide them and the landlord sent letters dated June 15, 2017 and July 15, 2017 noting he was not in compliance and giving him until June 20, 2017 to comply. The July 15, 2017 granted him 5 days from July 15, 2017 to comply. The tenant said he gave the cheque for the security deposit on July 20, 2017 which was the last possible day according to the July 15, 2017 letter but the landlord said he did not receive it until August 6, 2017 although the tenant had back dated it to July 20, 2017. I found the landlord's evidence more credible than the tenant's as it was well supported by the letters sent to the tenant indicating he was not in compliance and a copy of the returned cheque.

The cheque was rejected by the bank as there was a blank in the recipient's name. I find the weight of the evidence is the tenant did not supply a valid cheque for his security deposit within the 30 days required by the legislation and after sending two letters, the landlord was forced to issue a One Month Notice to End Tenancy because the tenant had not paid the security deposit. Rather than issue a valid cheque immediately, the tenant chose to dispute the Notice but did not file his Application in time. I find the tenant has still not paid the security deposit or November's rent. He enquired from me as to whether he should pay now and I advised him he was at risk of having a 10 Day Notice to End Tenancy served on him. I find his Application is without merit.

Conclusion:

For the reasons indicated above, I decline to grant an extension of time to file the Application to dispute the One Month Notice to End Tenancy. I dismiss this Application without recovery of the filing fee due to lack of success. The tenancy is at an end on

September 30, 2017 which is the effective date on the Notice. Pursuant to section 55 of the Act, as the tenant has been unsuccessful in his Application, I find the landlord entitled to an Order of Possession. An Order of Possession is issued effective November 30, 2017. I note it is the tenant's responsibility to pay rent for "use and occupancy" until he vacates and the landlord should note that cheques are accepted for "use and occupancy only" and acceptance does not constitute reinstating the tenancy.

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: November 08, 2017

Residential Tenancy Branch