



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNC, CNR, OPR, & FF

Introduction:

This hearing dealt with cross applications by the parties. The tenant is seeking to have two notices to end tenancy set aside. The landlord is seeking to have an Order of Possession due to non-payment of rent. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined:

Is the landlord entitled to an Order of Possession based on the 10 day Notice to End Tenancy due to non-payment of rent?

Analysis:

The landlord stated that he was seeking an Order of Possession on the basis of a 10 day Notice to End Tenancy served on January 2, 2009 due to non-payment of rent. However, the tenant stated that he attempted to pay the rent on January 5, 8th and 9th, 2009 but the landlord refused to accept the payment. There is a receipt on file showing that the landlord accepted payment on January 12, 2009.

In the absence of any credible evidence from either party, I accept the evidence as documented on the receipt dated January 12, 2009 as being the date the rent was paid for the use of the apartment. In his written statement the tenant stated that when he did not pay the rent and after he received the 10 day Notice to End Tenancy, he was informed by an Information Officer with the Residential Tenancy Branch that he must pay the rent within five days. According to the tenant's written statement the landlord refused the payment. If the tenant had filed his amended application on January 5, 2009 he would have still be within the five days provided under section 46(5) to dispute the notice. However, the tenant did not file to dispute the notice until January 9, 2009, two days beyond the allowable five days to dispute the notice.

It is my determination that the most reasonable conclusion in consideration of the events is that if the tenant had attempted to pay the rent on January 5, 2009 and the landlord refused to accept payment than the tenant would have filed an application immediately instead of waiting until the deadline under the *Act* had passed. This is the most logical conclusion or interference on the basis that the tenant was fully aware of his right and obligations after speaking with the Information Officer. I find, on the balance of probabilities that it is more likely than not that the tenant did not attempt to pay the rent until January 9, 2009 at which point the landlord may have refused it. However, I accept that the rent was ultimately paid as of January 12, 2009. Regardless, the tenant failed to properly respond to the 10 day Notice to End Tenancy.

I also find that because the tenant was aware of his rights and obligations there are no exceptional circumstances on which to extend the timeline under section 46(4) of the *Act*. I am satisfied that the tenant was fully aware of his obligations both from the information provided on the notice and by his questions directly to the Residential Tenancy Branch.

I find that the tenant failed to exercise his rights under section 46(4) of the *Act* and as a result conclusively accepted the end of the tenancy pursuant to section 46(5) of the *Act*. On this basis I grant the landlord's request for an Order of Possession effective **February 28, 2009 at 1:00 p.m.**

I deny the landlord's request for a monetary claim as the landlord has failed to substantiate his claim in any way.

Conclusion:

I dismiss the tenant's application. I grant the landlord's application in part and grant the landlord an Order of Possession due to non-payment of rent by the tenant. Having found that the 10 day Notice to End Tenancy was valid, it was not necessary to consider the merits of the one month Notice to End Tenancy. I Order that each party is responsible for the cost of filling their individual applications.

Dated February 20, 2009.

Dispute Resolution Officer