



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR

Introduction

This matter dealt with an application by the Tenant for more time to apply to cancel a Notice to End Tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010.

The Tenant claimed that he sent an evidence package to the Residential Tenancy Branch via fax on November 30, 2010 however as of the time of hearing, this evidence had not been received by the Dispute Resolution Officer or the Landlord. The Tenant sought an adjournment of the hearing for this reason. The Tenant said this evidence contained character references and written submissions about why he was late paying the rent. The Landlord objected to an adjournment and I find that this evidence would not be relevant as it would not address the issue(s) to be decided under s. 46 or s. 66 of the Act. Consequently, the Tenant was not granted an adjournment.

Issues(s) to be Decided

1. Are there exceptional circumstances that warrant the Tenant applying late?
2. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started approximately 3 – 4 years ago. Rent is \$352.00 per month payable in advance on the 1st day of each month. On November 2, 2010, the Landlord's agent served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010. The Landlord said that the Tenant has not paid the arrears set out on the 10 Day Notice of \$352.00.

The Tenant said he was unaware that he had applied late but in any event he was sick with the flu and filed his application as soon as he was able. The Tenant also said that he offered to pay the rent in cash to the Landlord's agent on November 10, 2010 but she told him that she could not accept it for rent but only "for use and occupancy." The Tenant said he was unable to pay the rent earlier because he had lost a freelance job and another did not pay him on time.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on November 2, 2010 with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010 and that he applied for dispute resolution to cancel that Notice on November 10, 2010. Consequently, I find that the Tenant applied late or beyond the 5 day time limit set out under s. 46(4) of the Act. Section 66(1) of that Act says that the director may extend a time limit under the Act but only in exceptional circumstances. RTB Policy Guideline #36 sets out some examples of what might qualify as exceptional circumstances such as, for example, being hospitalized. Even if I were to accept the Tenant's argument that he was too sick with the flu to file his application on time, I find that his application would still fail for other reasons.

The Tenant admitted that it was not until November 10, 2010 (8 days after receiving the Notice) that he offered to pay the Landlord's agent the overdue rent. Section 46(4) of the Act says that the overdue rent must be paid within 5 days of receiving the 10 Day Notice. Section 66(3) of the Act says that the director may not extend the time limit under s. 46(4) of the Act to pay the overdue rent unless the extension is agreed to by the Landlord. The Landlord did not agree to extend the time for the Tenant to pay the overdue rent. Consequently, I find that there are no grounds for allowing the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010 and his application is dismissed without leave to reapply.

The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.



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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: December 01, 2010.

Dispute Resolution Officer