



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to allow the tenant more time to make an application to cancel a Notice to End Tenancy – Section 66;
2. An Order cancelling a Notice to End Tenancy – Section 46; and
3. A Monetary order for money owed or compensation - Section Monetary Order for unpaid rent - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant’s application was reviewed and the Tenant was informed by the Dispute Resolution Officer (the “DRO”) that the dispute in relation to the Notice would be heard and determined first, following which the Tenant’s claim for compensation would be heard.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application to cancel the Notice to End Tenancy?

Is the Notice to end Tenancy valid?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on March 1, 2009. Rent of \$500.00 is payable monthly. No security deposit was taken by the Landlord. The Tenant failed to pay rent for May 2012 and on May 8, 2012 the Landlord personally served the Tenant with a Notice to End

Tenancy for Unpaid Rent (the “Notice”). The Tenant filed an application to dispute the Notice on May 18, 2012. The effective date of the Notice is May 18, 2012.

The Tenant states that as the Landlord has given him several documents over the last while, the Tenant did not pay attention to the Notice when it was received. The Tenant states that after it was realized that the Notice was given to him and not another document, the Tenant made the application. The Tenant states that he did not pay May rent because the Landlord owed him money.

At this point in the Hearing, the Tenant was provided oral reasons for not granting the Tenant’s application for more time and upholding the Notice as valid. The Tenant then disconnected from the Hearing call. The DRO waited for a further 5 minutes in case the disconnection was accidental and the Tenant did not return to the Hearing. The Landlord asked for an Order of Possession.

Analysis

Section 66 of the Act provides that a time limit may be extended only in exceptional circumstances and that such an extension must not be given beyond the effective date of the Notice. I find that the Tenant’s reasons for the late filing date are not exceptional and I therefore dismiss the Tenant’s application for more time to make an application to cancel the Notice.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the Tenant has not filed the application in time to dispute the Notice, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on May 18, 2012 and the application in relation to cancelling the Notice is dismissed.

As the Tenant failed to remain in the Hearing to advance his claim for a monetary order, I dismiss the remainder of the Tenant's application.

Section 55 of the Act provides that where a tenant's application to dispute a notice to end tenancy has been dismissed at the time of the hearing and the landlord makes a request for an Order of Possession, such an Order must be granted. Given the dismissal of the application and the request for an Order of Possession, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: June 11, 2012.

Residential Tenancy Branch