



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and the landlord's agent.

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in his Application.

At the outset of the hearing the landlord identified that he had a hearing set for August 13, 2012 seeking an order of possession and a monetary order for unpaid rent and that he had submitted evidence, he thought was for this hearing, but that may have been placed in his Application file.

With agreement and permission of both parties I obtained copies of the landlord's evidence from that file, including a copy of the 10 Day Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The tenant submits the tenancy began on June 20, 2012 as a 1 year fixed term with a monthly rent of \$675.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The landlord submits the tenancy began on June 15, 2012 as a 3 month fixed term with a monthly rent of \$675.00 due on the 1st of each month with a security deposit of \$300.00 required but only \$200.00 paid.

The tenant testified he received a 10 Day Notice to End Tenancy for Unpaid Rent on July 6, 2012. The tenant testified that he was not aware that the 5 days meant 5 calendar days and assume that he had 5 business days to file his Application for Dispute Resolution to dispute the notice.

The tenant submits that he was told by the Residential Tenancy Branch that the landlord had provided a "counterfeit" Notice to End Tenancy because it did not include the second page and therefore the instructions that he had 5 days to submit his Application.

The tenant acknowledged in the hearing that the Notice he had in front of him during the hearing stated near the top of the page: "Tenant: You may be EVICTED if you Do Not Respond to this Notice. You have five (5) days to pay the rent or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch."

Analysis

Section 66 of the Act allows the extension of a time limit such as that to dispute a 10 Day Notice to End Tenancy for Unpaid Rent under exceptional circumstances. The tenant provided no evidence of any exceptional circumstances.

Regardless of the tenant's confusion over whether the Notice meant calendar or business days the tenant provided no testimony that he attempted to get clarity prior to July 13, 2012, 7 days after he received the notice.

Despite the tenant's submission that the 2nd page included instruction that the 5 days are calendar days and not business days, I find nothing on the second page of a 10 Day Notice that provides this additional clarity.

For these reasons, I find the tenant has not established exceptional circumstances sufficient to grant more time to dispute this Notice. I therefore dismiss the tenant's Application in its entirety.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 01, 2012.

Residential Tenancy Branch