



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel 2 notices to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord only. The phone lines were held open for 10 minutes and the tenant never called in to the hearing.

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

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled more time to apply to dispute two notices to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 46, 47, and 66 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 10 Day Notice for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause 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 landlord testified the tenancy began on August 1, 2008 and is currently a month to month tenancy for the monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$275.00 being held by the landlord.

The landlord also testified that the tenant was not issued a 1 Month Notice to End Tenancy for Cause but was issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 4, 2012 with an effective date of September 12, 2012 citing the tenant had failed to pay rent for the month of September.

The landlord testified the notice was served to the tenant by posting it on the rental unit door on September 4, 2012 at 3:02 p.m. and that this service was witnessed by a third party. The landlord also testified to date the tenant has not paid rent for September or October 2012.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the tenant's Application and the landlord's testimony I accept the tenant was issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 4, 2012 when it was posted to his door.

In accordance with Section 90 of the *Act* the notice is deemed to have been received by the tenant 3 days after it was posted or in the case before me on or before September 7, 2012. As such the tenant had until September 12, 2012 to file an Application for Dispute Resolution to dispute the notice.

The tenant has submitted his Application for Dispute Resolution on September 13, 2012 and as such has failed to file his Application within the 5 days allowed under Section 46(4).

In the absence of the tenant or any evidence from the tenant as to why he was unable to file his Application within the required timeframes set out in Section 46(4), I find the tenant has failed to establish any extraordinary circumstances to warrant an extension to the 5 days allowed.

As such, I find the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety, without leave to reapply.

Based on the landlord's verbal request, 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: October 16, 2012.

Residential Tenancy Branch