



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, ERP, RP

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied for more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for the cost of emergency repairs and an order the landlord make emergency repairs and repairs.

At the start of the 1 p.m. conference call hearing the landlord and his agent were present; the tenant did not attend the hearing until 1:07 p.m., at which time he was affirmed, the process of the hearing was explained and parties were given the opportunity to ask questions about the hearing process.

The landlord's agent was affirmed at the start of the hearing.

Preliminary Matters

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request for more time to cancel the Notice ending tenancy and to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

The tenant confirmed that he had not made any expenditure for emergency repairs.

Issue(s) to be Decided

Is the tenant entitled to more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and, if so, should the Notice be cancelled?

Background and Evidence

The tenant confirmed that on December 16, 2012 he received a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant confirmed that he did not apply to cancel the Notice until January 8, 2013. The effective date of the Notice was December 26, 2012.

Analysis

I have considered the timing of the tenant's application relation to section 66(3) of the Act, which provides:

3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As the Notice served to the tenant on December 16, 2012 had an effective vacancy date of December 26, 2012; the tenant was required to submit his application requesting more time to dispute the Notice, no later than December 25, 2012.

As the tenant has applied requesting more time to cancel the Notice I find, based on section 66(3) of the Act, that the request for more time must be dismissed. Therefore, as the tenant did not pay the rent owed within 5 days of December 16, 2012, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on December 26, 2012.

At the start of the hearing the landlord said they wanted the tenant to move out of the unit. I find this is equivalent to a request for possession of the unit. Section 55(1) of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice

Therefore, the landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application requesting more time to cancel the Notice and request to cancel the Notice is dismissed.

The landlord is entitled to an Order of possession.

The balance of the tenant's application is severed and the tenant has leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 31, 2013

Residential Tenancy Branch

