



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

The Respondent's agent (the agent) appeared at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 2:00 p.m. to enable him to connect with this teleconference hearing. The agent and her daughter, who acted as her translator, attended the Burnaby Office of the Residential Tenancy Branch. The agent believed that this hearing was to be conducted in person at that Office. Due to the difficulty in communicating through the translator, I conducted this hearing as a mixed teleconference and face-to-face hearing, although it was scheduled solely as a teleconference hearing.

The agent testified that she witnessed her husband post the 10 Day Notice on the tenant's door at 4:30 p.m. on November 1, 2012 and witnessed him hand another copy of the 10 Day Notice to the tenant at 7:30 p.m. that same day. She entered into written evidence at the hearing copies of a Proof of Service document signed by her and her husband with respect to the service of the 10 Day Notice, the 10 Day Notice and the 1 Month Notice. The two Notices had been provided to the tenant. The agent also testified that she witnessed her husband hand the tenant the 1 Month Notice on November 1, 2012. Based on the evidence provided, I am satisfied that the landlord served the 10 Day Notice to the tenant in accordance with the *Act*.

The landlord identified November 1, 2012 as the effective date to end the tenancy in the 10 Day Notice. In accordance with section 53 of the *Act*, the landlord's incorrect effective date is automatically corrected to November 11, 2012. At the hearing, the agent requested an Order of Possession if the tenant's application for cancellation of either of the Notices to End Tenancy were dismissed.

Issues(s) to be Decided

Should the tenant's application to cancel the Notices to End Tenancy be allowed? If not, is the landlord entitled to an Order of Possession on the basis of the Notices to End Tenancy issued by the landlord?

Background

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Analysis

As the tenant did not attend the hearing and provided no written evidence other than his application for dispute resolution, I order his application to cancel both the 1 Month Notice and the 10 Day Notice dismissed without leave to reapply.

Section 55(1) of the *Act* allows a landlord to request the issuance of an Order of Possession if the tenant's application to cancel a Notice to End Tenancy has been dismissed. However, in order to grant the landlord an Order of Possession, section 52 of the *Act* requires me to be satisfied that the landlord's written notice is in the correct form and contains the correct content.

At the hearing, I advised the agent that the landlord's 1 Month Notice was of no legal effect because the landlord had failed to state any grounds for issuing that Notice. I find that this tenancy cannot be ended on the basis of the landlord's 1 Month Notice.

At the hearing, I said that the agent's oral request for an end to tenancy on the basis of the 10 Day Notice would lead to an issuance of a 2 day order of possession. I based that advice on my understanding that the landlord's 10 Day Notice was in order but for the incorrect effective date, which I can correct pursuant to section 53 of the *Act*.

After further review of the landlord's 10 Day Notice, I find that the 10 Day Notice dated November 1, 2012, did not identify rent that was due at that time. Monthly rent for November 2012 would not become outstanding until November 2, 2012, the day after it was due. Of even more significance is the landlord's identification of \$1,050.00 that was identified as due on **November 30, 2012**, 29 days after the 10 Day Notice was issued. In other words, the landlord's 10 Day Notice identified rent as owing that did not become due until well after the 10 Day Notice was issued. Although this may have been an error on the landlord's part in preparing the 10 Day Notice, the written evidence

of the landlord's 10 Day Notice fails to identify any rent that was owing at the time that the 10 Day Notice was given to the tenant. The agent testified that the tenant has not paid monthly rent since the 10 Day Notice was issued. While the tenant's failure to pay rent that became due for December 2012 and January 2013 may give cause for the landlord to issue a new 10 Day Notice to the tenant, I cannot correct the critical errors in the landlord's existing 10 Day Notice.

As I find the landlord's 10 Day Notice of November 1, 2012 does not identify outstanding rent that was due at the time that Notice was issued, I cannot approve the agent's request for an end to this tenancy on the basis of that 10 Day Notice and cannot issue the Order of Possession that the agent requested at this hearing. While I realize that this decision is at odds with the information I provided to the agent during the hearing, the serious errors in the landlord's 10 Day Notice were not apparent at that time and prevent me from issuing an Order of Possession.

For the above reasons, I dismiss the landlord's agent's oral request for the issuance of an Order of Possession based on both Notices to End Tenancy issued in November 2012 without leave to reapply. As I find that both of the Notices to End Tenancy issued in November 2012 have no legal effect, this tenancy continues. The landlord is at liberty to provide new notices to end tenancy to the tenant based on the circumstances that have occurred since the original notices were issued.

Conclusion

I dismiss the tenant's application for dispute resolution without leave to reapply. I dismiss the landlord's agent's oral request for an Order of Possession based on the 1 Month and 10 Day Notices issued on November 1, 2012 without leave to reapply. As the two Notices issued on November 1, 2012 have no legal effect, this tenancy continues.

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: January 16, 2013

Residential Tenancy Branch

