



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. Dealers Trade-In Centre Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT CNR

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to allow a tenant more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and to cancel a 10 Day Notice.

The tenant and an agent for the landlord (the “agent”) attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing.

The tenant confirmed that she received the evidence package from the landlord and she had the opportunity to review that evidence prior to the hearing. The agent testified that he did not receive the tenant’s evidence in time to review it prior to the hearing. The tenant served evidence on the Residential Tenancy Branch on August 19, 2013, which is not in accordance with the rules of procedure. The agent requested that the tenant’s evidence be excluded as a result. I have excluded the tenant’s evidence as the tenant failed to serve her evidence in accordance with the rules of procedure. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

Preliminary and Procedural Matter

At the outset of the hearing, the agent for the landlord requested to have the name of the landlord’s agent, AG, removed from the tenant’s application. The tenant did not agree to removing agent AG from her application for dispute resolution. Residential Tenancy Branch Policy Guideline #26 states that agents may be included in an application for dispute resolution, even if they are not named in the tenancy agreement. As the tenant did not agree to remove the name of the landlord’s agent from her application, I have decided not to remove the name of landlord agent, AG, from the tenant’s application.

Issues to be Decided

- Is the tenant entitled to more time to make an application to cancel a 10 Day Notice?
- Should the 10 Day Notice be cancelled?

Background and Evidence

The tenant disputed that she received a copy of the tenancy agreement in her evidence package. As a result, I accept the testimony of the tenant and the agent of the landlord, both of whom confirmed that the tenancy began on July 1, 2011. The parties agreed that the tenancy agreement was initially a fixed term tenancy that reverted to a month to month tenancy after January 1, 2012.

The parties agreed that monthly rent in the amount of \$800.00 was due on the first day of each month and that the tenant paid a security deposit of \$400.00 at the start of the tenancy.

The tenant writes in her application for dispute resolution that she received the Notice to End Tenancy on June 14, 2013 and is seeking more time to dispute the 10 Day Notice. The tenant also applied to cancel the 10 Day Notice.

The agent testified that the tenant was served the 10 Day Notice on June 14, 2013 by posting to the tenant's door. One day later, the agent stated that landlord agent AG attended the rental unit and noted that the 10 Day Notice had been removed from the door which was posted the day prior. The agent stated that in an abundance of caution, agent AG posted another copy of the 10 Day Notice on June 15, 2013 and noted that the 10 Day Notice posted on that date had also been removed from the tenant's door. The tenant did not file her application for dispute resolution until July 24, 2013. The 10 Day Notice indicates that \$800.00 in rent was owed as of January 1, 2013 and the effective vacancy date is June 24, 2013.

The tenant stated that she was in Ontario at the time and did not know about the 10 Day Notice until July 2013. The agent testified that the landlord was not aware that the tenant was away at the time the 10 Day Notice was posted to her door, and stated that both 10 Day Notices were removed from her door, and that the landlord also sent the 10 Day Notice by registered mail on July 15, 2013.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's request to allow more time to make an application to cancel the Notice -
Section 66(3) of the *Act* states:

Director's orders: changing time limits

66 (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.**

[emphasis added]

In the matter before me, the tenant writes in her application that she received the 10 Day Notice on June 14, 2013. The agent testified that the tenant was served with the 10 Day Notice on three occasions, the first time on June 14, 2013 by posting to the tenant's door, the second time on June 15, 2013 by posting to the tenant's door again, and the third time on July 15, 2013 by registered mail. The tenant testified that she was not aware of the 10 Day Notice until July 2013. I do not accept the tenant's testimony that she was not aware of the 10 Day Notice until July 2013, as she acknowledged in her application for dispute resolution that she received the 10 Day Notice on June 14, 2013.

Pursuant to section 90 of the *Act*, the tenant is deemed served three days after the posting of the 10 Day Notice to her door. In the case of the June 14, 2013 date provided by the agent as the date the 10 Day Notice was first posted to the tenant's door, the deemed service date would be June 17, 2013, which automatically corrects the effective date of the 10 Day Notice to June 27, 2013. Regardless of whether I accept the tenant's acknowledgement on her application that she received the Notice to End Tenancy on June 14, 2013, or the deemed service date of June 17, 2013 based on the agent's testimony, the tenant did not submit her application until July 24, 2013, which is well beyond the effective date of the 10 Day Notice.

Pursuant to section 66(3) of the *Act*, I 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. The tenant did not apply for dispute resolution until July 24, 2013. Therefore, **I dismiss** the tenant's application in full, without leave to reapply, as the tenant applied after the effective date of the 10 Day Notice, and I am barred at law from extending the time limit for the tenant to dispute the 10 Day Notice.

The agent for the landlord made an oral request for an order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

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.

[emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that 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 and may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

I dismiss the tenant's application in full, without leave to reapply.

I grant the landlord an order of possession effective **two days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

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: August 20, 2013

Residential Tenancy Branch