



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Bros Hld. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT; CNR; OLC; MNSD; RP; RR; FF

Introduction

This Hearing was convened to consider the Tenant's application filed January 29, 2014. The Tenant applied for an extension of time to file an application to cancel a Notice to End Tenancy for Unpaid rent issued January 23, 2014 (the "Notice"); to cancel the Notice; for return of the security deposit; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for an Order that the Landlord make regular repairs to the rental unit; for a rent reduction; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

The Tenant testified that he handed his Notice of Hearing documents to an agent of the Landlord's at the building manager's office on January 31, 2014. The Landlord's agent DM acknowledged being served in this manner.

Preliminary Matters

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I explained to the parties that the Tenant's requests for Orders, return of the security deposit, and a rent reduction are not sufficiently related to the Tenant's request for more time to file his application to cancel the Notice and to cancel the Notice. The Tenant indicated that he wanted to proceed with the portion of his application dealing with the Notice. For these reasons, I dismissed the remainder of the Tenant's application **with leave to reapply**. The Hearing continued with respect to the Tenant's application for an extension of time to cancel the Notice and his application to cancel the Notice.

Issues to be Decided

- Should the Tenant be granted an extension of time pursuant to the provisions of Section 66(1) of the Act?

- If an extension is granted, should the Notice be cancelled?

Background and Evidence

It was established that the Tenant was served with the Notice on January 23, 2014. The Tenant testified that he did not file his Application for Dispute Resolution within the 5 days required by Section 46(4) of the Act because he did not have any money to pay the filing fee. He stated that he could not afford to pay full rent or a filing fee because his two roommates moved out of the rental unit. The Tenant stated that they moved out because the Landlord refused to make necessary repairs for more than a year. The Tenant stated that his roommates had separate tenancy agreements with the Landlord, but the Landlord expected him to pay his roommate's rent after they moved out.

The Landlord's agents disputed that there were separate tenancy agreements. A copy of a tenancy agreement was provided by the Landlords. The tenancy agreement is signed by all three Tenants and indicates that monthly rent is \$1,225.00, due on the 1st day of each month. Therefore, I explained to the Tenant that he and his roommates were co-tenants under the same agreement and were jointly and severally responsible for debts and damages under the agreement.

The Tenant started to become agitated. He stated that the rent would have been paid in full if his roommates had not moved out; and that they moved out because the Landlord did not comply with Section 32 of the Act. I explained that Section 26 of the Act requires rent to be paid when it is due, whether or not a landlord complies with the Act, unless the Tenant had an Order of the director allowing him to withhold all or part of the rent. The Tenant stated that he did not have such an Order.

The Tenant exited the call at 2:00 p.m., before I had made a ruling with respect to his application for an extension of time.

The Landlord's agents requested an Order of Possession.

Analysis

Section 66 of the Act provides that an extension of a time limit may be granted **only in exceptional circumstances**. Residential Tenancy Policy Guideline 36 provides the following clarification with respect to "exceptional circumstances":

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word

"exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse.

In this case, I find that the circumstances were not exceptional. A tenant or landlord may apply to be exempt from paying the filing fee in the event of financial hardship. Therefore, I dismiss the Tenant's application for an extension of time to file his application to cancel the Notice.

The Notice to End Tenancy issued January 23, 2014, was received by the Tenant on January 23, 2014. Therefore I find the effective end of tenancy date February 2, 2013.

During the Hearing the Landlord asked for an Order of Possession. Further to the provisions of Section 55 of the Act, I hereby provide an Order of Possession to the Landlord.

The Tenant has not been successful in his application and therefore I find that he is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application for an extension of time to file and application to cancel the Notices is **dismissed**. Therefore, the Tenant's application to cancel the Notice was not considered. The Tenant's application for recovery of the filing fee is **dismissed**. The remainder of the Tenant's application is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and 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: March 19, 2014

Residential Tenancy Branch

