



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to allow a tenant more time to make an application to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on February 10, 2015.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on February 10, 2015, to end the tenancy effective February 20, 2015. The tenant stated they did not dispute the notice within the timeframe because the landlord gave them an addition two weeks to pay the outstanding rent.

The tenant testified that they did make payments towards the outstanding rent, but did not pay the amount of \$910.00 for February 2015, rent by the extension date given and that amount remains outstanding. The tenant stated that they have not paid any rent for March 2015. The tenant stated that they believe that the landlord should issue them a new notice to end the tenancy.

The landlord testified that they gave the tenant an opportunity to pay the outstanding by a specified date; however, the tenant did not pay the outstanding rent and have failed to pay any rent for March 2015. The landlord stated that there was no agreement to cancel the Notice and it would be unreasonable to have to issue a new notice. The landlord seeks an order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Although the tenant filed an application for more time to dispute the Notice, I find the tenant has not provided any evidence of an exceptional circumstance that occurred that prohibited the tenant from making their application with the timeframe permitted under the Act. The fact the landlord gave the tenant addition time to pay rent, does not extend the timeline for filing an application. Only an Arbitrator has the authority to make such an extension.

Further, under the Act the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, the tenant admitted that rent was not paid in full for February 2015, and have not paid any rent for March 2015. The fact the landlord gave the tenant an extension of time to pay the rent, which the tenant did not honour, does not cancel the Notice issued on February 10, 2015. The tenant cannot unilaterally withdraw a Notice.

Based on the above, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: April 14, 2015

Residential Tenancy Branch

