



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, MNDC, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on December 16, 2015, to cancel a 1 Month Notice to End Tenancy for Cause, issued on December 23, 2015, for a monetary order for loss or money owed and to provide services or facilities required by the tenancy agreement.

Both parties appeared, gave affirmed 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 to me.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

Issue to be Decided

Should the notices to end tenancy be cancelled?

Background and Evidence

Based on the testimony the tenant, I find that the tenant was served with a notice to end tenancy for non-payment of rent on December 16, 2015. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant testified that they did not pay rent within 5 days; however, they gave the landlord a cheque on the sixth day. The tenant stated that the landlord returned the cheque as they wanted cash or certified cheque.

The tenant testified that they did not file an application to dispute the notice within 5 days; however, they amended their application to dispute the 10 day notice on January 7, 2015.

The landlord stated that they seek to end the tenancy and they have an outstanding file requesting an order of possession.

Analysis

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

Although the tenant applied to cancel the 10 day notice to end tenancy dated issued and received on December 16, 2015. I find the tenant did not apply within the five days statutory time limit as their application was not made to dispute notice until January 7, 2016, which is after the effective vacancy date.

Further, although the tenant attempted to pay rent, I find that was not within the five days statutory time limit. Therefore, under section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy ends.

Although the tenant has paid rent for December 2015, and January 2016, I find there is no evidence that the landlord was reinstating the tenancy. Further, the landlord has an outstanding application for dispute resolution which would confirm they were not reinstating the tenancy. Therefore I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on December 16, 2015.

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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice

I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act. However, as the tenant has paid occupancy rent for January 2016, I find that the landlord is entitled to an order of possession effective **January 31, 2016 at 1:00 pm**. A copy of this order must be served on the tenant.

This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the tenancy has legally ended based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find it not necessary to consider the merits of the 1 Month Notice to End Tenancy for Cause.

Conclusion

The tenant's application to cancel the notices to end tenancy is dismissed. The balance of the tenant's application is dismissed with leave to reapply.

The landlord is granted an order of possession pursuant to section 55 of the Act.

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 22, 2016

Residential Tenancy Branch

