



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing convened as a result of cross applications. In the Application for Dispute Resolution filed by the Landlord on February 23, 2016, the Landlord sought the following Orders:

1. an Order of Possession based on unpaid rent pursuant to section 55;
2. a Monetary Order for unpaid rent pursuant to section 67;
3. an order to retain the security deposit in partial satisfaction of the claim pursuant to section 38; and
4. recovery of the \$100.00 filing fee for the Application.

In the Tenant's Application for Dispute resolution filed February 15, 2016, the Tenant sought the following:

1. more time pursuant to section 66 to make an application to dispute a Notice to End Tenancy;
2. an Order pursuant to section 46(4) canceling a Notice to End Tenancy;
3. an Order pursuant to section 32 that the Landlord make repairs;
4. an Order pursuant to section 33 that the Landlord make emergency repairs; and
5. an Order pursuant 65(1) that the Tenant be permitted to deduct the cost of repairs, services or facilities from the rent.

Both parties appeared at the hearing. The Landlord was represented by the property manager, J.P. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Residential Tenancy Branch Rules of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy as the continuation of the tenancy was at issue.

It is my determination that the priority claims before me in the cross applications filed by the parties are as follows:

1. the Tenant's claim for an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities;
2. the Tenant's application for more time pursuant to section 66; and,
3. the Landlord's claim for an Order of Possession.

The Landlord sought recovery of the filing fee, which is their entitlement should they be successful and I accordingly determine that relief to be related to the aforementioned priority claims.

As such, I exercise my discretion and **I dismiss with leave to reapply** the balance of the relief sought by the parties in their respective claims.

Issues to be Decided

1. Should the Tenant be granted more time to make his application for dispute resolution pursuant to section 66(1)?
2. Should the Notice be cancelled?
3. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?
4. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement dated December 31, 2015 and which indicated as follows: the tenancy began January 1, 2016; monthly rent was payable in the amount of \$1,150.00; and a security deposit in the amount of \$575.00 was paid on January 5, 2016.

J.P. testified that the Tenant failed to pay rent for the month of February 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on February 12, 2016 indicating the amount of \$1,150.00 was due as of February 1, 2016 (the "Notice").

Based on the testimony of J.P., I find that the Tenant was served with the Notice on February 12, 2016 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of February 15, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, February 20, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As February 20, 2016 is a Saturday, the Tenant had until February 22, 2016 in which to make his application for Dispute Resolution.

The Tenant confirmed that he received the Notice on February 15, 2016 on his application for dispute resolution as well as when he testified.

The Tenant applied on February 23, 2016. In the Details of Dispute section on his application for dispute resolution he wrote the following:

“I was hospitalized for my breathing released from hospital today. We believe our condo to have mould issue have requested landlord to have inspection done as I have been hospitalize d 3 times due to breathing issues since living at this address”.

[Reproduced as Written]

The Tenant failed to file any evidence in support of his application for dispute resolution.

When I asked the Tenant why he did not apply on or before February 22, 2016 he responded “I was working” “I thought I applied in the right amount of time”. The Tenant did not make any mention of his alleged hospitalization (which he referenced in his application as noted above) during his testimony on April 12, 2016.

The Tenant further testified that he paid his rent in full as of April 2016.

In reply J.P. stated that the Landlord had not received the rent the Tenant claimed to have paid in April of 2016.

Analysis

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

The evidence establishes that the Tenant applied for dispute resolution outside the time limits imposed by the *Residential Tenancy Act*. In his application, he requests an Order for more time.

Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

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*].

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant’s conduct

did not cause or contribute to their failure to meet the time limit;

- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

Although the Tenant wrote on his application for dispute resolution that he was hospitalized, he did not make any mention of this in his testimony at the hearing. Further, he failed to provide any evidence to support his claim that he was hospitalized for a period of time.

When asked why he did not apply on or before the deadline of February 22, 2016, the Tenant replied that he was working and believed he had applied within time. I find that these are not exceptional circumstances as contemplated by the *Act*. Accordingly, I dismiss his request for more time pursuant to section 66.

The Tenant's application was filed out of time, and he is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an order of possession 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.

The Landlord, having been substantially successful, is entitled to recover the \$100.00 filing fee. I grant the Landlord a Monetary Order under section 67 for the amount of **\$100.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file in time to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a monetary Order for the amount of **\$100.00** representing recovery of the filing fee. The Landlord is at liberty to apply for a further Monetary Order for unpaid rent and other losses pursuant to section 67.

This decision is final and binding on the parties, except as 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: April 12, 2016

Residential Tenancy Branch