



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and 10 Day Notice to End Tenancy for Non-Payment of Rent, and granting him more time in which to make this application. The tenant appeared at the hearing; the landlord did not.

The tenant testified that he served the Application for Dispute Resolution and Notice of Hearing by sliding them under the office door and the manager acknowledged receipt of the documents in a later conversation. Sliding documents under the door, either of a landlord's office or a tenant's unit, is not proper service. However, in this case, I accept the tenant's sworn testimony that the landlord acknowledged receipt of the documents and I order, pursuant to section 71(2)(c), that the documents have been sufficiently served for the purposes of this Act.

Issue(s) to be Decided

- Should the tenant be granted an extension of time in which to file this application?
- Is the 1 Month Notice to End Tenancy for Cause dated April 26, 2016 valid?
- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated May 2, 2016 valid?

Background and Evidence

This month-to-month tenancy commenced May 1, 2015. The monthly rent of \$600.00 is due on the first day of the month.

On April 26, 2016 the tenant was served with a 1 Month Notice to End Tenancy for Cause with an effective date of May 31, 2016. The tenant testified that after he received the notice he went to the Service BC office and called the Residential Tenancy Branch for advice. He was told to file an application disputing the notice.

Before he had completed his application for dispute resolution he was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent on May 2. The effective date of this notice was May 12.

The tenant testified that as it appeared the issue behind both notices was the same he was confused and did not know what to do. He decided he had to see a lawyer. He was not able to see this lawyer until Friday, June 3. Ultimately, the lawyer told him to dispute both notices.

On June 6 he went to the Service BC office and filed this application for dispute resolution.

The tenant said he has offered payment of the \$95.00 arrears of rent as well as the June and July rents but the landlord has refused to accept payment.

Analysis

The tenant had until May 6 to dispute the 1 Month Notice to End Tenancy for Cause and until May 9 to dispute the 10 Day Notice to End Tenancy for Non-Payment of Rent. Both notices contain clear information about the time limits and the toll-free information number.

Section 66(1) allows an arbitrator to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy Guideline 26: Extending a Time Period*. The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.
- The party was not paying attention to the correct procedure.
- The party relied on incorrect information from a friend or relative.

Subsection (3) limits the arbitrator's discretion by setting out that the time limit cannot be extended beyond the effective date of the notice to end tenancy. The practical effect of this subsection is that if a tenant applied to dispute a notice to end tenancy after the effective date of the notice, the arbitrator has no jurisdiction to hear the matter even where the tenant can establish that there were exceptional circumstances.

As the tenant's application was filed after the effective date of both notices I must dismiss his application.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and both notices to end tenancy comply with section 52, therefore, I grant the landlord an order of possession effective two days after service.

Conclusion

For the reasons set out above the tenant's application is dismissed and the landlord has been granted an order of possession effective two days after service. If necessary, this order may be file in the Supreme Court 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: July 22, 2016

Residential Tenancy Branch