



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC (Landlord's Application)
MT, CNR, MNDC, FF (Tenant's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications.

In the Landlord's Application filed on July 29, 2016 the Landlord requested an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 26, 2016 (the "Notice"), a Monetary Order of Unpaid rent, and to recover the filing fee.

In the Tenant's Application filed on August 30, 2016 the Tenant sought to cancel the Notice, more time to make the application, monetary compensation and to recover the filing fee.

Both parties appeared at the hearing. They were also both assisted by friends who acted as translators. 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

In the parties' respective applications they sought monetary compensation from each other.

Residential Tenancy Branch Rule 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.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the parties' respective monetary claims. While the issue of unpaid rent is related to some extent, the parties failed to provide a copy of the tenancy agreement and could not agree on the quantum of monthly rent due.

Further, the parties and their translators had difficulty participating in the hearing in English, and as such, the hearing was prolonged due to these communication issues. As noted in the hearing, the parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy and to ensure the hearing could be conducted in an efficient manner I exercised my discretion to dismiss the balance of the parties' claims with leave to reapply.

Issues to be Decided

1. Should the Tenant be granted more time to apply to cancel the Notice pursuant to section 66(1) of the *Residential Tenancy Act*?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began "approximately 1 year ago" and that the Tenant was to pay \$500.00 per month in rent.

The Landlord stated that the Tenant last paid rent in January of 2016 such that at the time of the hearing rent was outstanding in the amount of \$4,000.00. He confirmed he sought \$4,100.00 in compensation for unpaid rent as well as the \$100.00 filing fee.

The Notice was dated June 26, 2016. When asked the when the Notice was served, the Landlord testified that he posted the Notice to the rental unit door on June 1, 2016. When it was brought to his attention that the Notice was dated *after* the day he claims to have served it, he could not explain how that occurred.

The Tenant testified that he received the Notice on July 7, 2016. He further testified that he initially applied for dispute resolution but then cancelled the hearing as the Landlord promised to give him more time to find a place to live.

A review of the audit notes confirms that a hearing date was obtained on July 5, 2016, and that this hearing was cancelled by the Tenant on July 26, 2016.

The audit notes also show that the Landlord called into the time for the hearing (which had been cancelled unbeknownst to the Landlord) after which he called the Branch to ascertain what had occurred. At this time he was informed the hearing had been cancelled.

The Landlord applied for dispute resolution on July 29, 2016 seeking an Order of Possession and monetary relief.

The application which was filed by the Tenant and was scheduled before me was filed on August 30, 2016.

While the evidence filed by the Tenant indicates he disagrees with the amounts he was expected to pay for monthly rent, the Tenant confirmed that he has not paid rent since February 2016.

Analysis

After consideration of the testimony of the parties, the evidence before me and on a balance of probabilities, I find as follows.

I am unable, based on the testimony of the parties to determine when the Tenant was served with the Notice. The testimony of the parties conflicts and does not accord with the documentary evidence. The Landlord testified that he posted the Notice to the rental unit door on a date which predates the issuance of the Notice; he could offer no explanation for this discrepancy. The Tenant claims to have received the Notice on July 7, 2016, yet he appears to have applied for dispute resolution *before* receiving it (July 5, 2016).

The Tenant states that he applied for dispute resolution, then cancelled his hearing as he had reached an agreement with the Landlord. The Landlord appears to have called into the hearing suggesting no such agreement was reached.

The application before me was filed by the Tenant on August 30, 2016. This was a month after the Landlord had applied for dispute resolution, and clearly much more than five days after he initially received the Notice. Although the parties disagree as to the date the Tenant was served with the Notice, in cancelling his initial application, it is as if he never applied at all. Clearly, the Tenant applied a second time well outside the five days required by the Act.

As the Tenant did not apply for dispute resolution within five days of receiving the Notice, it is necessary to consider section 59(1) of the Act and whether exceptional circumstances exist.

The Tenant alleged an agreement existed between himself and the Landlord with respect to the Notice. This is disputed by the Landlord. The Tenant failed to provide any supporting documentation, or further evidence to support his claim that an agreement existed such that the initial application was no longer necessary.

I find the Tenant has failed to prove exceptional circumstances exist which warrant an extension of time pursuant to section 66(1). Accordingly, the Tenant's Application for more time is dismissed.

Consequently, the Tenant's application to cancel the Notice pursuant to section 46(4) is similarly dismissed. The tenancy shall end in accordance with the Notice, and pursuant to section 55 of the *Residential Tenancy Act* I grant the Landlord an Order of Possession. This Order must be served on the Tenant by the Landlord and may, if necessary, be filed and enforced in the B.C. Supreme Court.

I wish to point out that even in the event I had found the Tenant was entitled to more time pursuant to section 66(1), I would have dismissed his claim. While the parties disagree as to the amount of rent to be paid, the Tenant conceded he had not paid any rent since March 2016.

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.

Conclusion

The Tenant's application for more time pursuant to section 66(1) is dismissed. Having applied outside the five days required by the *Act*, the Tenant's application for an Order canceling the Notice is similarly dismissed. The Landlord is granted an Order of Possession.

The monetary claims of the parties are dismissed with leave to reapply.

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: September 20, 2016

Residential Tenancy Branch