



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 6, 2016 (the "Notice") and for more time to make her application pursuant to section 66(1) of the *Residential Tenancy Act*.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, 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, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Tenant be granted more time to apply to dispute the Notice pursuant to section 66(1) of the *Residential Tenancy Act*?
2. Should the Notice be cancelled?

Background and Evidence

The Tenant confirmed that she was personally served the Notice on September 7, 2016.

The Notice was issued pursuant to section 46 of the *Residential Tenancy Act*. Section 46(5) of the *Residential Tenancy Act*, provides that a Tenant who fails to apply for Dispute Resolution or pay the outstanding rent within five days is conclusively presumed to accept the end of the tenancy.

The Notice informed the Tenant that she was required to pay the rent in full or make an application for dispute resolution *within* five days of receipt of the Notice. Accordingly, the Tenant had until September 12, 2016 to file her Application for Dispute Resolution.

The Tenant applied on September 13, 2016. When I asked the Tenant why she did not apply for Dispute Resolution on September 8, September 9, or September 12, she claimed she was babysitting her grandchildren and was not able to attend Service B.C.

The Tenant stated that she then went to the Service B.C. office on September 13, 2016 to make her application. She claimed that she was assured by staff at the office that she had applied within time.

Analysis

In the case before me, the Tenant failed to apply for dispute resolution within the five days required by section 46 of the *Residential Tenancy Act*. The Notice clearly informed the Tenant she must file *within* 5 days.

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.

In this case the Tenant claimed she did not file within time as she was caring for her grandchildren. While this is no doubt an important task to the Tenant, it is not an *exceptional circumstance* as contemplated by section 66.

The Tenant also claimed she was informed that by filing by September 13, 2016 she had applied within time. Notably, on her application filed that day she requested more time pursuant to section 66(1); this is an acknowledgement that she filed outside the time required, and is therefore inconsistent with her claim that she was informed she had applied within time.

In all, I find that the Tenant has failed to provide sufficient proof to substantiate her claim that such *exceptional circumstances* existed which prevented her from filing her application in time.

Finally, the Landlord's agent testified that the Tenant failed to pay the outstanding rent for August 2016, and September 2016 (as set out on the Notice) as well as failing to pay rent for October 2016 and November 2016.

The Tenant testified that she had an agreement with the Landlord that the rent would be reduced for the time she and her family spent removing a fallen tree from the rental property. The Landlord adamantly denied such an agreement existed. The Tenant failed to submit any evidence with respect to the existence of such an agreement.

Under section 26 of the *Act*, a 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 I find that the Tenants had no such authority under the *Act* to not pay rent. Accordingly, I find that even in the event the Tenant had been successful in her application for more time her application to cancel the Notice would have been unsuccessful.

Conclusion

The Tenant did not apply to dispute the Notice within the time required in section 46 of the *Act*, and her application for more time pursuant to section 66(1) is denied. In failing to apply on time, the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. The Landlord must serve the Order of Possession on the Tenant and may file and enforce the Order in the B.C. Supreme Court 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: November 09, 2016

Residential Tenancy Branch