



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding United Revenue Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, OLC, MT

Introduction

On January 17, 2017 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for more time to apply to cancel a Notice to End Tenancy.

The Tenant stated that on January 16, 2017 the Application for Dispute Resolution, the Notice of Hearing and a copy of the Ten Day Notice to End Tenancy for Unpaid Rent were left in the Landlord's mail box. The Agent for the Landlord acknowledged receiving those documents and they were accepted as evidence of these proceedings.

On February 01, 2017 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were left in the Tenant's mail box on February 02, 2017 or February 03, 2017. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy and, if so, should the Notice to End Tenancy for Unpaid rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began several years ago;
- the Tenant is currently required to pay \$800.00 per month in rent;
- on January 05, 2017 a Ten Day Notice to End Tenancy for Unpaid Rent, dated January 05, 2017, was posted on the door of the rental unit;

- on January 05, 2017 the same a Ten Day Notice to End Tenancy for Unpaid Rent was placed in the Tenant's mail box;
- the Ten Day Notice to End Tenancy for Unpaid Rent declared that the rental unit must be vacated by January 16, 2017.
- the Tenant has paid no rent for January or February of 2017; and
- the Tenant is still living in the rental unit.

The Agent for the Landlord stated that rent is due by the first day of each month. The Tenant stated that rent is due, in advance, by the last day of each month.

The Tenant stated that she received the Ten Day Notice to End Tenancy on January 05, 2017. She stated that she did not dispute the Notice to End Tenancy until January 17, 2016 as she was struggling with work and personal issues.

At the hearing I mistakenly informed the parties that the Landlord would be granted a monetary Order for unpaid rent. I am unable to grant a monetary Order to the Landlord in these circumstances, as the Landlord has not applied for a monetary Order. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for unpaid rent.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$800.00 no later than the first day of each month and that the Tenant has not paid rent for January or February of 2017.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent, dated January 05, 2017, was received by the Tenant on January 05, 2017.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective no less than ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on January 05, 2017 I find that the declared effective date of the Notice, which is January 16, 2017, is a valid effective date.

Section 46(4)(b) of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to file an Application for Dispute Resolution to dispute the Notice. The Tenant did not file an Application for Dispute Resolution to dispute the Notice until January 17, 2017, which is more than five days after she received it on January 05, 2017.

Section 66(1) of the *Act* authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. Section 66(3) of the *Act* prevents me from extending the time limit to apply to set aside a Notice to End Tenancy

beyond the effective date of the Notice. As the effective date of the Notice was January 16, 2017 and the Tenant did not file her Application for Dispute Resolution until January 17, 2017, I am unable to grant for more time to apply to cancel this Notice to End Tenancy, pursuant to section 66(3) of the *Act*.

Section 46(4)(a) of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to pay the outstanding rent. On the basis of the undisputed evidence I find that the rent from January has still not been paid.

As the Tenant did not file an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy on time and she did not pay the outstanding rent, I find that the Tenant accepted that the tenancy ended on January 16, 2017, which is the effective date of the Notice to End Tenancy. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy, dated January 05, 2017.

Section 55(1) of the *Act* stipulates that if I dismiss a tenant's application to set aside a notice to end tenancy, I must grant the landlord an Order of Possession. As I have dismissed this Application for Dispute Resolution, I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

Conclusion

I grant the Landlord an Order of Possession that is two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: February 09, 2017

Residential Tenancy Branch