



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application completed January 20, 2017: MT; CNR; MNDC
Landlord's Application made January 23, 2017: MNR; OPR

Introduction

This Hearing was scheduled to consider cross-applications. The Tenant has applied for more an extension of time to dispute a Notice to End Tenancy for Unpaid Rent issued January 6, 2017 (the "Notice"); to cancel the Notice; and for compensation for damage or loss under the Act, Regulation or tenancy agreement.

The Landlord's Application for Dispute Resolution seeks an Order of Possession and a monetary award for unpaid rent.

The parties gave affirmed testimony at the Hearing. The Tenant testified that his Notice of Hearing documents were given to the Landlord by a friend. The Landlord's agent acknowledged receipt of the Tenant's Notice of Hearing documents on January 25, 2017.

The Landlord's agent JD testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were provided to the Tenant, by registered mail sent on January 25, 2017. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

The Tenant testified that he did not receive the Landlord's Notice of Hearing documents. He stated that the only document he received from the Landlord was the eviction Notice, which he stated was left on his door. A search of the Canada Post tracking system confirms that the documents were mailed to the Tenant on January 25, 2017; that a notice card was left at the rental unit on January 26, 2017, indicating where and when the documents could be picked up; that a final notice was left at the rental unit on January 31, 2017, stating that the documents would be returned to sender if not picked

up within 10 days; and that the documents were being returned to the Landlord on February 16, 2017, unclaimed.

I find that, despite the fact that the Tenant did not collect the documents at the post office, the Landlord duly served the Tenant with its Notice of Hearing documents pursuant to the provisions of Section 89 of the Act. I invited the Landlord to provide details about the tenancy orally, and referred to the copy of the Notice from the Tenant's Application.

At the outset of the Hearing, the Tenant stated that he did not wish to proceed with his application for a monetary award against the Landlord. The Tenant did not provide any documentary evidence (for example a Monetary Order worksheet or proof of a loss in the amount of \$8,000.00). Therefore, this portion of his Application is dismissed.

Preliminary Matter

The Tenant has applied for an extension of time to dispute the Notice.

Section 46(4)(a) of the Act provides:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

[reproduced as written]

Section 66 of the Act provides:

- 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]*.
- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:
- (a) the extension is agreed to by the landlord;
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

(reproduced as written]

The Tenant acknowledged that he received the Notice “on January 9 or 10”, 2017, after being released from hospital. The Tenant has not paid rent for January, 2017.

In this case, the Landlord’s agents did not agree to the extension and the Tenant provided no evidence that he believed he could deduct money from rent owed for emergency repairs, or that he had an Order allowing him to deduct money from rent.

In addition, the Tenant stated that he did not take steps to make his Application until January 19, 2017, because he was in hospital and recovering from an illness.

According to the provisions of the Act, the Tenant’s Application was “made” on January 20, 2017, after the filing fee was dealt with. The Tenant stated that he had documentary proof that he was in hospital until January 9 or 10, 2017, but he did not provide such documentary evidence to the Residential Tenancy Branch. In addition, he did not explain why his friend (who served the Landlord), or another agent did not make his Application on his behalf within 5 days of receipt of the Notice (before January 14 or 15, 2017).

Based on the Tenant’s oral testimony, I find that he provided insufficient evidence that there were exceptional circumstances as outlined in Section 66(1), and that the provisions of Section 66(2) have not been met. Therefore, his application for an extension is dismissed and his application to cancel the Notice will not be heard.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and Monetary Order against the Tenant?

Background and Evidence

This tenancy began on January 11, 2016. Rent is \$1,100.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

The Landlord's agent testified that she posted the Notice to End Tenancy for Unpaid Rent to the Tenant's door on January 6, 2017. The Tenant acknowledged receipt of the Notice on January 9 or 10, 2017. In the absence of proof to the contrary, documents served by posting are deemed to be received 3 days after posting the documents. In this case, I find that the Tenant was served with the Notice on January 9, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant did not dispute the Notice or pay the rent within the 5 days required.

The Landlord's agents asked to apply the security deposit towards the Landlord's monetary award.

The Landlord's agents stated that if the Tenant paid the outstanding rent for January, 2017 and for use and occupancy for the month of February, the Landlord would not enforce an Order of Possession until February 28, 2017.

The Tenant stated that he does not get paid in time to pay rent when it is due. He said he tried to give the Landlord money for January's rent on February 4, 2017, but the Landlord would not accept it. The Landlord's agent stated that she was fearful that the Tenant might allege that the tenancy had been reinstated if she accepted rent for January on February 4, 2017.

Analysis

I find the Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on January 19, 2017.

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.

Based on the testimony of both parties, I find that the Landlord is entitled to a Monetary Order against the Tenant, calculated as follows:

Outstanding rent for January, 2017	\$1,100.00
Less set off of security deposit (Section 72.1 of the Act)	<u>-\$550.00</u>
TOTAL	\$550.00

This Monetary Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety.

I find that the tenancy ended on January 19, 2017.

The Landlord is hereby provided with an Order of Possession and a Monetary Order.

The agents for the Landlord consented that the Landlord would not enforce the Order of Possession until February 28, 2017, if the Tenant **paid \$1,650.00** to the Landlord immediately. This amount is comprised of the amount outstanding for January, 2017 rent, less set off of security deposit, plus \$1,100.00 for "use and occupancy" of the rental unit for the month of February, 2017. I explained to the Tenant that this payment does not reinstate the tenancy.

This decision is final and binding on the parties, unless 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 Act.

Dated: February 16, 2017

Residential Tenancy Branch