



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, erp, mt, rp

Introduction

The tenant has applied for dispute resolution, seeking an order for more time to dispute a 10 day Notice to End tenancy, an order cancelling the 10 day Notice to End Tenancy (for unpaid rent or utilities), and an order for repairs.

Both parties attended the hearing, and provided testimony.

I clarified at the start of the hearing that the dispute of the 10 day Notice and request for more time to dispute the notice would be heard, but not the unrelated claims for repairs. This is because one of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with an array of issues of concern to the tenant in one short hearing. Accordingly, hearings are generally limited to issues that are related in fact and law. In this case the repair claims by the tenant are not related to the issue of the disputed Notice to End this tenancy. Pursuant to Rule 2.3, the repair claims are therefore dismissed, and given the outcome of this claim, no liberty to reapply is granted.

Issues to Be Decided

- Is it appropriate to order more time for the tenant to file his dispute of the 10 day Notice?
- Is the 10 day Notice effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?

Background and Evidence

This tenancy began about 5 months ago. Monthly rent is \$800.00 due and payable on the 1st day of each month. A security deposit of \$400.00 was paid. The tenant failed to pay January's rent as and when due, and on January 3, 2017, he was served a 10 day Notice to End Tenancy. He filed a dispute of the Notice, and his application was formally stamped as received on January 10, 2017.

Regarding his claim for more time to file his dispute of the 10 day Notice, and as to why his rent wasn't paid on time, the tenant testified that he was working 12 hour shifts, and he crashed his company's vehicle because he was overtired. He submitted that the

landlord only gave him one page of the two page Notice. He did not know what to do about the Notice, because he is only 19, and this is his first time renting. He offered to pay rent on January 9, but the landlord refused to accept it. The tenant further testified that he now has the money, and could pay the rent.

The landlord testified that he served both pages of the 10 day Notice to the tenant. No money has been offered for January's rent by the tenant, and on the contrary the tenant has refused to pay January rent as late as last night.

Analysis

The tenant's rent was due and payable on the first day of each month. Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay rent on the first day of each month, even if the landlord had not have provided certain services, or made necessary repairs. An exception to this rule is that in some qualifying circumstances, a tenant may deduct from rent owed, an amount paid by the tenant for emergency repairs.

When January's rent was not paid, the tenant was given a 10 day Notice to End Tenancy. Section 46 of the Residential Tenancy Act deals with issues related to a landlord's 10 day Notice to End Tenancy for unpaid rent. Subsection 46(4) provides that the time limit to dispute such notice is within 5 days after the date the tenant receives the notice. In this case the tenant's dispute was clearly filed more than 5 days after he received the Notice.

I turn to address the issue as to whether there should be an extension to the allowable time to file the dispute. Section 66(1) of the *Residential Tenancy Act*, provides that I have the authority to extend or modify a time limit only in exceptional circumstances. Section 66(2) however, clarifies that this authority to modify a time limit does not extend to cases of 10 day notices for non-payment of rent, unless agreed to by the landlord, or in cases where the tenant deducted money from the rent because the tenant believed that the deduction was allowed for emergency repairs, or under an order of the director.

Neither of these exceptions apply in this case. The tenant alleges he did not know that he only had 5 days to dispute the Notice, he alleges the Notice was incomplete, and did not provide him with information on the second page as to when his rent had to be paid, or the time limit for filing a dispute of the Notice. The landlord's testimony, however, was that the full two page Notice was given to the tenant. In considering these differing testimonies, I do not find the tenant's testimony credible, given that there is clear information provided on the first page of the Notice that the rent must be paid, or a dispute filed within five days of receipt of the Notice. The landlord was emphatic that the full proper Notice was served, and I prefer that testimony over that of the tenant and find that a full and proper Notice was given to the tenant, and that he had the required information available to him as to time limits to file his dispute. I further note that no

allegation was made by the tenant that rent money had been applied to any emergency repairs.

Under these circumstances, I have no authority to extend the time limit to dispute the Notice, and I have no authority to grant the tenant an extension of time to pay the rental arrears. The tenant's claim for more time is dismissed, and the 10 day Notice is found effective to end this tenancy.

Section 55 (1) of the Residential Tenancy Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. As noted above, I find the form and content of the Notice to be proper. Having dismissed the tenant's claim, all required conditions for an Order of Possession are met. I grant an Order of Possession to the landlord, effective 48 hours following service upon the tenant.

Conclusion

The tenant's claim is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

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 01, 2017

Residential Tenancy Branch