



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1963 INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mt, cnr

Introduction

The tenant has applied for dispute resolution, seeking an order for more time to dispute a 10 day Notice to End Tenancy and an order cancelling the 10 day Notice to End Tenancy.

Both parties attended the hearing, and provided testimony. The evidence of each party was properly exchanged.

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 October 8, 2014. Monthly rent is \$668.85 due and payable on the 1st day of each month, and includes all utilities. On February 17, 2017, the landlord gave the tenant a 10 day Notice to End Tenancy, which stated that the tenant had failed to pay utilities of \$350.00, following written demand on January 27, 2017. The tenant filed his application for dispute on February 23, 2017. He testified that he did not file within the 5 day period, because he thought he only needed to consider business days, not all calendar days.

The landlord testified that the \$350.00 owing is not really for utilities, but rather is money owed by the tenant for a bed bug treatment.

Analysis

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 filed on the 6th day after he received the Notice. 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, and the claim for more time to dispute the Notice is dismissed.

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. In this case, although the tenant's claim is dismissed, I find the content of the Notice to be improper. The claim for reimbursement for the bed bugs treatment was never a claim for utilities. The landlord acknowledged that utilities are included in the rent, and all rent is paid. Accordingly, under these circumstances, it would be inappropriate to issue an Order of Possession on the basis of this Notice. The tenancy shall therefore continue.

Conclusion

The tenant's claim is dismissed, but the Notice is found to be improper, and no Order of Possession is issued to the landlord.

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: March 22, 2017

Residential Tenancy Branch