



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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|----------------------|-----------------------------------------------------------------------|
| <u>Dispute Codes</u> | CNR, MNDC, MNR, MNSD, MT, OLC, PSF, RP, RR, FF (Tenant's Application) |
| | OPR, MNR, FF (Landlord's Application) |

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution filed March 9, 2017, the Tenants sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued March 1, 2017 (the "Notice");
- a Monetary Order for:
 - recovery of the filing fee;
 - money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - compensation for the cost or emergency repairs; and
 - return of the security deposit paid;
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - provide services or facilities required by the tenancy agreement or law;
 - make repairs to the rental unit;
- Authority to reduce rent for repairs, services or facilities agreed upon but not provided.

In the Landlord's Application for Dispute Resolution they sought the following relief:

- an Order of Possession based on the Notice;

- a Monetary Order for unpaid rent; and,
- recovery of the filing fee paid.

The hearing was conducted by teleconference on April 11, 2017. Both parties called into the hearing and were given an 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.

Preliminary Matter—Naming of Landlord

The Tenants named the Landlord's agent as Landlord on their application for dispute resolution. A copy of the residential tenancy agreement was provided in evidenced confirmed the name of the Landlord. Pursuant to section 64(3)(c) I amend the Tenant's application to remove the Landlord's agent's name as Landlord.

Severing Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the question of the continuation of this tenancy is not sufficiently related to the parties other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. I therefore exercise my discretion to dismiss with leave to reapply the balance of the parties' claims as set out in their respective applications.

I will therefore only deal with the Tenants' request for an Order canceling the Notice, for more time to make their application pursuant to section 66(1) of the *Residential Tenancy Act*, the Landlord's claim for an Order of Possession and the parties claims for recovery of the filing fee paid.

Issues to be Decided

1. Should the Tenants be granted more time to apply to cancel the Notice pursuant to section 66(1)?
2. Should the Notice be cancelled?
3. If not, should the Landlord be granted an Order of Possession?
4. Should either party recover the filing fee paid?

Background Evidence

The Tenant, H.A., testified that he received the Notice on March 2, 2017. This is also confirmed on the Tenant's Application for Dispute Resolution wherein the Tenants write that they received the Notice on March 2, 2017.

The Landlord issued the Notice pursuant to section 46 of the *Act*; the relevant portions of that section provide as follows:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

- (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.

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date

The Tenants applied for dispute resolution on March 9, 2017 which is outside the time to apply as provided above.

Accordingly, the Tenants had until March 7, 2017 in which to pay the outstanding rent, or apply to dispute the Notice.

H.A. stated that they did not apply for dispute resolution within five days as they spent a “few days contacting lawyers and such”, “calling the Residential Tenancy Branch”, and “researching on line”. H.A. further stated that the staff at the residential tenancy branch told them that they were “within the time lines” and they did nothing wrong.

H.A. also submitted that he believed that the Notice to End Tenancy was filled out wrong as the Landlord dated it March 1, 2017, when it was served on March 2, 2017, and that the Notice should therefore be cancelled as being improperly drafted.

On the first page of the Notice, the Tenants are informed they must respond to the Notice as follows:

Tenant: You may be EVICTED if you do not respond to this Notice.

You have five (5) days to pay the rent and utilities (if applicable) to the landlord
Or file an Application for Dispute Resolution with the Residential Tenancy Branch.

The second page of the Notice provides the following additional information:

**If within 5 days you do not pay the rent and utilities (if applicable) or
Make an application for dispute resolution, the landlord can apply for dispute
resolution
For an order of possession through the Direct Request process.**

INFORMATION FOR TENANTS

- You have the right to dispute this Notice within 5 days after you receive it, by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application for Dispute Resolution within 5 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (you can move out sooner). If you do not file the Application or move out, your landlord can apply for an Order of Possession.

Note: The date a person receives documents is what is used to calculate the time to respond; the deeming provisions do not give you extra time to respond.

At the conclusion of the hearing H.A. confirmed that they wanted the tenancy to end as quickly as possible and that to this end, they were already packing.

Analysis

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 all the circumstances, I find the Tenants have submitted insufficient evidence to support a finding that exceptional circumstances prevented them from filing on time; and accordingly I deny their request for more time pursuant to section 66(1) of the *Act*.

As an explanation for why they applied outside the time required, the Tenants submitted that they spent a few days calling lawyers, conducting internet research and calling the residential tenancy branch. The information regarding the time limit was clearly noted on the Notice which informed the Tenants they had five days in which to make their application. I do not accept the Tenants' evidence that staff at the residential tenancy branch told them they were within the time required as the Application filed on March 9, 2017 clearly indicates the Tenants sought more time to make their application.

As I have denied the Tenants' request for more time pursuant to section 66(1), they are conclusively presumed to accept the end of the tenancy pursuant to section 46(5)(a) as reproduced earlier in this my Decision. Therefore, their application to cancel the Notice is similarly dismissed.

The date the Notice is signed does not necessarily indicate the date it was served. I accept the Landlord's evidence that the Notice was issued, March 1, 2017 and served on March 2, 2017. This does not affect the validity of the Notice.

Conclusion

The Tenant did not apply to dispute the Notice within the time required in section 46 of the *Act*, and their application for more time pursuant to section 66(1) is denied. In failing

to apply on time, the Tenants are conclusively presumed under section 46 of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find, pursuant to section 55 of the *Act*, that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. The Landlord must serve the Order of Possession on the Tenants and may file and enforce the Order in the B.C. Supreme Court as an order of that Court.

The Landlord, having been successful, is entitled to recovery of the \$100.00 filing fee paid. I authorize the Landlord pursuant to sections 38 and 72, to retain \$100.00 of the Tenants' security deposit as compensation for this amount. The balance of the Tenants security deposit shall be held until dealt with in accordance with the *Act*.

The balance of the parties claims, as set out in their respective applications, are dismissed with leave to reapply.

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: April 11, 2017

Residential Tenancy Branch