



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MT, OLC, PSF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on February 5, 2018, wherein the Tenants sought the following relief:

- an Order canceling a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities issued on January 8, 2018 (the "Notice");
- an Order pursuant to section 66 of the *Residential Tenancy Act* (the "Act") for more time make an application to cancel the Notice;
- an order restricting the Landlord's right to enter the rental unit;
- an Order that the Landlord comply with the *Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement; and,
- an order that the Landlord provide services or facilities as required by law

The hearing was conducted by teleconference on March 28, 2018. 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.

Preliminary Matter—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 continuation of this tenancy is not sufficiently related to the Tenant's 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.

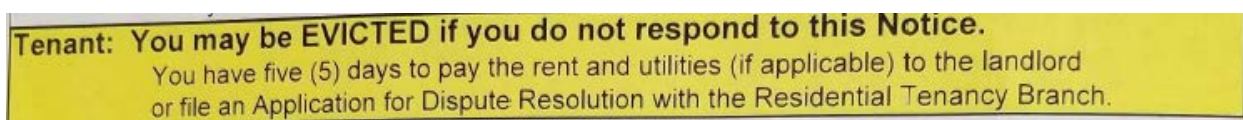
I therefore considered the Tenants' request to cancel the Notice as well as an order for more time to make such an application. For reasons which will be explained further in my Decision, I dismiss balance of the Tenant's claims.

Preliminary Matter—More time

The Tenant, L.P., stated the Notice was posted to the door on January 8, 2018. The Tenant confirmed that he saw the Notice on January 8, 2018. As such, I find the Tenants were served with the Notice on January 8, 2018.

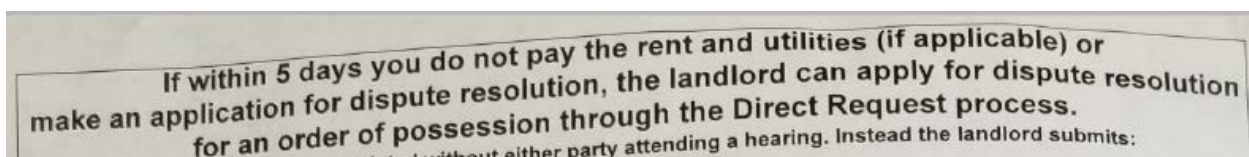
The Landlord provided a copy of the Notice in evidence. The Notice clearly informs the Tenants they had *five days* in which to pay the outstanding rent or apply to dispute the Notice.

The following information is contained on page 1 of the Notice:



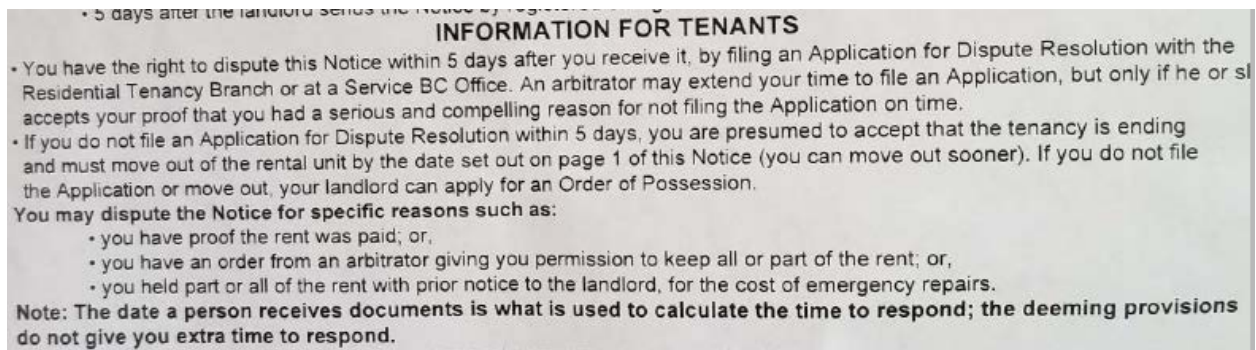
Tenant: You may be EVICTED if you do not respond to this Notice.
You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

On the second page of the Notice, the Tenants are further informed as follows:



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 through the Direct Request process. Instead the landlord submits:
for an order of possession through the Direct Request process. Instead the landlord submits:
completed without either party attending a hearing. Instead the landlord submits:

And continuing:



As the Tenants were served on January 8, 2018, they had until January 13, 2018 in which to make their Application.

The Tenants applied for Dispute Resolution on February 5, 2018.

When I asked why the Tenants did not apply for dispute resolution within the five days required by section 46 of the *Act*, L.P. responded that he went to the Residential Tenancy Branch on January 29, 2018 and was unable to complete his application.

I informed the Tenant that this was outside the time limit required at which time L.P. then stated that he went to the Residential Tenancy Branch on January 12, 2018, which he claimed was a Monday (notably January 12, 2018 was a Friday) He again stated that he was not able to complete his Application.

The Tenants failed to submit any evidence to support their claim that they attempted to apply for Dispute Resolution within the five days required by the *Act*.

Notably, on their online Application, the Tenants provided the following information:

"I thought I filed on line but it did not go through. We attended the tenancy branch on Monday Jan 29 at that point they did not file a dispute resolution. They said we could appeal. We received more paper work on the door on Sat Feb 3 so we returned to the tenancy branch on Monday Feb 5 to file."

On their Application filed February 5, 2018, the Tenants request more time to apply to dispute the Notice pursuant to section 66(1) of the *Act*.

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.

Residential Tenancy Policy Guideline 36 sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

I find it more likely that the Tenant's filed on January 29, 2018 as this was the date initially stated by L.P. as well as the date they wrote on their online Application. I also note that January 29, 2018 is a Monday which is the day of the week L.P. stated he initially attempted to apply for Dispute Resolution.

In any case, I find that the Tenants have failed to prove that exceptional circumstances prevented them from filing within the strict five day deadline imposed by section 46 of the *Act*. The Tenants allege they attempted to file earlier, but failed to provide any evidence to support this claim.

I therefore dismiss the Tenants' request for more time pursuant to section 66 of the *Act*.

As the Tenants failed to apply to dispute the Notice within the five days required in section 46, they are conclusively presumed to accept the end of the tenancy. As such, **their Application to cancel the Notice is dismissed.**

Conclusion

The Tenants' Application for more time to apply to dispute the Notice pursuant to section 66 of the *Act* is dismissed. As they failed to apply within the timeline required by section 46 of the *Act*, their application to cancel the Notice is also dismissed.

As the tenancy is ending the balance of the claims made by the Tenants are no longer relevant. I therefore dismiss the balance of the Tenants' claims without leave to reapply.

Pursuant to section 55 of the Act, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

At the end of the hearing, the Tenant, B.M., asked "now the Landlord has to get a bailiff, right?" The Tenants were cautioned during the hearing that any costs the Landlord may incur to enforce the Order of Possession, including the cost to hire a bailiff may be recoverable from the Tenants in addition to any amounts owing for outstanding rent.

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 28, 2018

Residential Tenancy Branch