



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a notice, pursuant to section 66; and
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- More Time

The tenant submitted into evidence a 10 Day Notice to End Tenancy with an effective date of May 17, 2018 (the "10 Day Notice"). The 10 Day Notice states that the landlord's agent personally served the tenant with the 10 Day Notice on May 7, 2018. The tenant applied to dispute the 10 Day Notice on May 28, 2018.

Section 66(3) of the *Act* states that 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.

I find that the tenant made this application for dispute resolution to dispute the 10 Day Notice beyond the effective date of the 10 Day Notice. Therefore, I dismiss the tenant's application for more time to dispute the 10 Day Notice.

Preliminary Issue- Service

The advocate testified that she served the landlord the notice of dispute resolution package by Purolator on May 31, 2018. The advocate testified that the package was not delivered and was returned to her. The landlord testified that he did not receive the dispute resolution package and only found out about today's hearing from a Service BC employee when he was filing a separate claim against the tenant.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find that the tenant did not serve the landlord in a manner required by section 89(1) of the *Act*. At the hearing, I advised the tenant and his advocate that I was dismissing the tenant's application.

Issue to be Decided

1. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Analysis

Section 55 of the *Act* states 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:

- (a) the landlord's notice to end tenancy complies with section 52 of the *Act*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the *Act* states that a notice to end tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy, and
- (e) be in the approved form.

Upon review of the 10 Day Notice, I find that the 10 Day Notice complies with the form and content requirements of section 52. As I have already dismissed the tenant's application, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 19, 2018

Residential Tenancy Branch