



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and for more time to apply cancel that Notice to End Tenancy.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were mailed to the Respondent by registered mail on September 07, 2018. She does not know when the Application was received by the Respondent.

The Agent for the Landlord stated that she has not received any evidence from the Applicant.

On October 11, 2018 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the rental unit, via registered mail, on October 11, 2018. She stated there was a delay in serving this evidence because she was out of the country between September 15, 2018 and October 07, 2015, and she did not receive the Application for Dispute Resolution prior to her departure.

I find that the evidence the Landlord mailed on October 11, 2018 is deemed received, pursuant to section 90 of the *Residential Tenancy Act (Act)*, on October 16, 2018. Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a respondent's evidence must be served to an applicant not less than 7 days before the hearing. As the Landlord's evidence was not served in accordance with the Residential Tenancy Branch Rules of Procedure and I do not have evidence that it was actually received by the Tenant, the majority of that package is not accepted as evidence for these proceedings.

The one document I will accept as evidence from the Landlord is the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of these proceedings. I find that it

would be reasonable and fair to accept this document as evidence, as the Tenant also submitted a copy of it to the Residential Tenancy Branch by the Tenant. I therefore am satisfied that the Tenant has a copy of that document and that he understood it would be considered at these proceedings.

I would typically, in circumstances such as these, adjourn a hearing to ensure that a party receiving late evidence has sufficient time to consider that evidence. I do not find that necessary in these circumstances, as the Ten Day Notice to End Tenancy is the only document submitted by the Landlord that I believe will be highly relevant to my decision. As I have accepted that document as evidence, I do not find it necessary to adjourn the hearing so that I can consider other evidence that the Agent for the Landlord can introduce through oral testimony.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and, if so, should that Notice to End Tenancy be set aside?

Background and Evidence

The teleconference hearing was scheduled for 11:00 a.m. on this date. The Agents for the Landlord attended the hearing at the scheduled start time. By the time the teleconference was terminated at 11:14 a.m., the Tenant had not appeared.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Agents for the Landlord and I were the only ones in this teleconference.

The Agent for the Landlord stated that the Landlord and the Tenant entered into a verbal tenancy agreement, which began on March 01, 2018. She stated that the Tenant agreed to pay rent of \$1,250.00 by the first day of each month.

The Agent for the Landlord stated that on August 28, 2018 a Ten Day Notice to End Tenancy was personally served to the Tenant, which declared that the Tenant must vacate the rental unit by September 08, 2018. She stated that the Tenant is still occupying the rental unit.

The Agent for the Landlord stated that the Notice to End Tenancy declares that the Tenant owed rent of \$7,500.00. She stated that the Landlord was unaware of some rent payments that had been made prior to service of the Notice to End Tenancy and that the Tenant actually owed \$5,225.00 in rent when the Notice to End Tenancy was served. She

stated that none of the outstanding rent has been paid since the Notice to End Tenancy was served.

Analysis

I find that the Tenant failed to diligently pursue his Application for Dispute Resolution and I therefore dismiss the Application, without leave to reapply.

Section 55(1) of the *Act* stipulates 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 to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: October 18, 2018

Residential Tenancy Branch