



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 10, 2018, wherein the Tenant requested more time to make an application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 1, 2018 (the "Notice").

The hearing was conducted by teleconference at 11:00 a.m. on October 22, 2018.

The Landlord called into the hearing as did Agents for the Tenant: Case Managers K.G. and S.S. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to 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 *Residential Tenancy Branch 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 Matters

The Tenant failed to indicate on his Application for Dispute Resolution that in addition to applying for more time pursuant to section 66 of the *Residential Tenancy Act*, that he also sought to cancel the Notice pursuant to section 46.

The Tenant also incorrectly spelled the Landlord's first name. Pursuant to section 64(3)(c) of the *Act* I amend the Tenant's Application to include a request to cancel the Notice as well as to correctly spell the Landlord's name.

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Tenant be granted more time to dispute the Notice pursuant to section 66 of the *Act*
2. In the event more time is granted, should the Notice be cancelled?

Background and Evidence

Introduced in evidence was a copy of the Notice indicating that the effective date was August 11, 2018. The Landlord testified that the Notice was posted to the rental unit door on August 1, 2018.

The Tenant applied for dispute resolution on September 10, 2018.

The dispute between the Landlord and Tenant arose as a result of the Tenant's failure to pay rent in accordance with a Notice of Rent Increase which came into effect January 1, 2018. At the time of the hearing the sum of \$284.00 was outstanding.

Analysis

Section 53 of the *Act* provides that the effective date of a notice to end tenancy automatically corrects to the earliest date which complies with the *Act*.

I find that the Notice was served on the Tenant by posting to the rental unit door on August 1, 2018. Section 90 of the *Act* provides that documents served in this way are deemed served three days later; which in this case, is August 4, 2018. As such, the effective date of the Notice automatically corrects, pursuant to section 53, to August 14, 2018, 10 days after service.

The Tenant applies for more time to dispute the Notice pursuant to section 66, which 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]*.

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) 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.

[Emphasis added in ***bold italics***]

Arbitrators are delegated by the Director of the Residential Tenancy Branch; as such, the use of the word “director” in subsection (3) applies to Arbitrators.

As noted above, the time limit to make an application for dispute resolution to dispute a notice to end tenancy must not be extended beyond the effective date of the Notice. As I have found the effective date of the Notice to be August 14, 2018, I am unable, pursuant to section 66(3) to extend the date for applying beyond August 14, 2018.

The Tenant applied for Dispute Resolution on September 10, 2018.

As I am unable to extend the time limit for applying beyond August 14, 2018, the result is that the Tenant’s application was made outside the strict five day limit imposed by section 46 of the *Act*. For clarity I reproduce that section in its entirety as follows:

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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

[emphasis added in ***bold italics***]

I therefore dismiss the Tenant's Application to Dispute the Notice. The tenancy shall end in accordance with the Notice.

Section 55 of the *Act* provides that I must grant an Order of Possession to the Landlord in the event I cancel a Tenant's Application to cancel a Notice. As such, the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant's Application for more time to dispute the Notice is dismissed pursuant to section 66(3) of the *Act*.

The Tenant's Application to cancel the Notice is dismissed pursuant to section 46(5) of the *Act*.

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. Should the Tenant fail to vacate the rental unit as required the Landlord may file and enforce the Notice in the B.C. Supreme 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 24, 2018

Residential Tenancy Branch