



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, ERP, DRI, OLC

Introduction

On August 17, 2018 the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10-day Notice (the Notice) pursuant to section 46 of the *Residential Tenancy Act* (the Act), seeking More Time to Cancel the Notice pursuant to section 66 of the Act, seeking an Order for Emergency Repairs pursuant to section 62 of the Act, seeking an Order for the Landlord to Comply with the Act, regulation, and/or the tenancy agreement pursuant to section 62 of the Act and seeking to Dispute a Rent Increase from the landlord pursuant to section 41 of the Act.

The Tenant and Landlord both attended the hearing, as did an agent and advocate for the Landlord. All parties agreed that the Notice of Hearing and all submitted evidence had been served and that all parties had a chance to review that evidence ahead of the hearing. I find that the Landlord was duly served with the Notice of Hearing documents in accordance with sections 88 and 89 of the Act.

All parties were affirmed to be truthful in their testimony and were provided the opportunity to present their testimony and evidence.

I have reviewed all oral, written and documentary evidence before me that met the Rules of Procedure. Only the evidence relevant to the issues and finding in this matter are addressed in this Decision.

I note that Section 55 of the 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 complies with the Act

Issues to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to be granted more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order for the Landlord to Comply with the Act, regulation, and/or the tenancy agreement?
- Is the Tenant entitled to an Order for Emergency Repairs?
- Is the Tenant entitled to Dispute a Rent Increase from the Landlord?

Background and Evidence

The Tenant submitted into evidence a handwritten tenancy agreement showing that the tenancy started April 1, 2018. Rent is due the 1st day of each month in the amount of \$500.00 and a \$250.00 security deposit was paid. All parties agreed that these details are correct.

The Tenant testified, and submitted evidence, that he received a 10 Day Notice to End Tenancy for Unpaid Rent in person on August 7, 2017. He also received a copy that had been taped to his door. The Notice was dated August 6, 2018 with an effective vacancy date of August 8, 2018 citing unpaid rent in the amount of \$700.00 due August 1, 2018 and unpaid utilities in the amount of \$137.20.

The Tenant testified, and records confirm, that he applied to dispute the Notice on August 17, 2018. The Tenant testified that he attempted to pay the Landlord but that the Landlord has refused payment. The Tenant did not provide testimony or evidence as to why he did not dispute the Notice on time. The Tenant said he had a medical issue, but when asked was unwilling to provide evidence or testimony on what that issue was or how it prevented him from applying to dispute the Notice on time.

Analysis

Section 52 of the Act requires that a Notice to End Tenancy be in writing and include the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, be in the approved form if given by the landlord and be signed and dated. I have reviewed the Notice served to, and entered into evidence by, the Tenant. I

find this Notice complies with the requirements of form and content pursuant to section 52 of the Act and that the Notice is valid and properly served.

The undisputed evidence presented by both parties is that the Notice was served and received on August 7, 2018. According to section 46 of the Act the Tenant then had five days after receiving the Notice to either pay the overdue amount of rent or utilities or to dispute the notice by making an application. The fifth day after August 7th was August 12th, which fell on a Sunday, so the Tenant had until August 13, 2018 to either pay the overdue amount or file an application for dispute resolution. I find that the Tenant did not file his application in time when he applied on August 17, 2018.

The Tenant has applied for more time to file the dispute under section 66 of the Act. Pursuant to Section 66 of the Act, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented him from disputing the Notice within the required time frame he was unable to provide any evidence of such. Therefore, I find that there was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented him from disputing the Notice on time

Section 46 of the Act states that if a tenant who has received a notice under that section does not pay the rent or make an application for dispute resolution in the five day period they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that day. I am satisfied that the Tenant is conclusively presumed to have accepted the tenancy is ended.

The Notice submitted into evidence notes August 8, 2018 as the effective date of the Notice which was not ten days after the Notice was served. Section 53 of the Act allows for an incorrect effective date to automatically change to the correct date in accordance with the Act which, since the Notice was served on August 7th, would be August 17th.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the Act, and as I have found the Tenant is conclusively presumed to have accepted the end of the tenancy, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the Act.

As this tenancy is ending in accordance with the Notice, I find that there is no need to address the Tenant's additional claims. I dismiss, with leave to reapply, the Tenant's claims for an order for the Landlord to comply with the Act, an order for emergency repairs and the Tenant's application to dispute a rent increase. If the Tenant believes he has already paid a non-compliant rent increase he can apply for a monetary claim for any amounts he believes he paid as a result.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order 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.

I dismiss, with leave to reapply, the Tenant's application for an order for the Landlord to comply with the Act.

I dismiss, with leave to reapply, the Tenant's application for an order for Emergency Repairs.

I dismiss, with leave to reapply, the Tenant's application to Dispute a Rent Increase.

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: September 25, 2018

Residential Tenancy Branch