



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP RR

Introduction

This hearing was convened as a re-hearing of the Tenant's Application for Dispute Resolution, made on June 28, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 18, 2018 (the "10 Day Notice");
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order reducing rent for repairs, services, or facilities agreed upon but not provided.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was accompanied by T.L., an agent. T.B. and C.C. also attended on behalf of the Landlord but did not participate in the hearing. The Tenant, Landlord, and T.L. provided a solemn affirmation at the beginning of the hearing.

Preliminary Issue – Timing of the Application

Section 46(4) of the *Act* confirms that a tenant who receives a notice to end tenancy for unpaid rent or utilities has five days after receipt to pay the overdue rent or to dispute the notice by making an application for dispute resolution. In this case, the Tenant confirmed she received the 10 Day Notice on June 19, 2018. A copy of the 10 Day Notice was submitted into evidence. As a result, the Tenant had until June 24, 2018, to pay the overdue rent or make an application for dispute resolution. However, as June 24, 2018, fell on a Sunday, the Tenant had until June 25, 2018, to make the Application.

Further, Rule 2.6 of the Rules of Procedure states:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office.

[Reproduced as written.]

In this case, the Tenant submitted an application for dispute resolution on June 25, 2018, but did not upload the documents for a fee waiver until June 28, 2018. Accordingly, I find the Tenant did not make the Application until June 28, 2018, three days after the deadline to do so. The Tenant did not request an extension of time to make the Application.

As the Application was not made on time, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the *Act*. The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession to the landlord. The language in the *Act* is mandatory. Having examined the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

As I have determined that the tenancy has ended, it has not been necessary for me to consider the Tenant's requests for an order that the Landlord make emergency repairs for health or safety reasons, or for an order reducing rent for repairs, services, or facilities.

I note the Tenant disconnected from the telephone conference hearing after being advised of the outcome but before the hearing had concluded.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

Pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in 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: September 7, 2018

Residential Tenancy Branch