



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MT

Introduction

This hearing was convened in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue – Extension of Time to File an Application

The landlord questioned why the tenant was able to file his application 15 days after receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants' agent was unable to provide any information as to why the tenant waited 15 days. Both parties agreed that the tenant received the notice by September 2, 2018 and that his application wasn't filed until September 17, 2018. The tenant has failed to provide sufficient evidence or justification to be granted an extension. Based on the tenant not filing their application within the legislated timeline and not providing sufficient evidence

to merit an extension, I hereby dismiss their request for an extension. In the result, the tenants application is dismissed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?

Background and Evidence

The tenancy began on October 1, 2017 with the monthly rent of \$500.00 due on the first of each month. The tenant provided a security deposit of \$250.00 at the outset of the tenancy. The landlord testified that the tenant only paid \$425.00 for the month of September and on September 2, 2018 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord testified that the tenant only paid \$425.00 for the month of October as well and now has an outstanding balance of \$150.00. The landlord requests an order of possession.

SH testified that the tenant made attempts to pay the outstanding rent, but did acknowledge and concede it was beyond the five days allowed as per the notice to end the tenancy.

Analysis

Although I have not granted the tenant an extension for filing his application, each party was still given an opportunity to give evidence. The tenants' agent acknowledged and confirmed that the tenant has not paid his rent in full and that he did not file his application in accordance with the legislated timelines.

Section 55(1) of the *Act* reads as follows:

55 (1) 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 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlords notice complies with section 52 of the Act. Based on the above, I find that the landlord is entitled to an order of possession. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2018 is of full effect and force. The tenancy is terminated.

The tenant has not been successful in his application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises 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: October 12, 2018

Residential Tenancy Branch