



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 8, 2019 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2019 (the "Notice");
- For more time to file the Application; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The city had been spelled incorrectly on the Application. This has been amended and is spelled correctly on the front page of this decision.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant I would not consider the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement as this issue is not sufficiently related to the dispute of the Notice which is the main issue before me. This request is dismissed with leave to re-apply. This does not extend any time limits under the *Residential Tenancy Act* (the "Act").

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed he received the hearing package. The Landlord had not received the Tenant's evidence; however, took no issue with admission of it given the nature of the evidence submitted.

The Tenant advised that she did not receive evidence from the Landlord. The Landlord testified that he served the evidence on the Tenant in person January 25, 2019. The Landlord had not submitted evidence in relation to this.

Given the conflicting testimony, and absence of evidence to support the Landlord's position about service, I am not satisfied that the evidence was served in accordance with the Act and Rules. I heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence as I found it would be unfair to admit it when the Tenant said she did not receive it and I was not satisfied it was served as required. The evidence excluded includes past 10 Day Notices to End Tenancy for Unpaid Rent or Utilities and a Proof of Service document. The remaining evidence of the Landlord is admitted given the nature of it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be granted more time to file the Application?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Tenant and a third tenant. The Tenant advised that the third tenant had vacated and the Landlord took no issue with the third tenant not being named in the Application. The agreement relates to the rental unit. The tenancy started May 1, 2011 and was for a fixed term ending October 31, 2011. The tenancy then became a month-to-month tenancy. Both parties agreed rent was \$887.00 for January of 2019 and is \$909.00 for February of 2019. Rent is due on or before the first day of each month.

The Notice states the Tenant failed to pay \$367.00 in rent that was due January 1, 2019. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of January 12, 2019. The Tenant took no issue with the form or content of the Notice.

Both parties agreed the Notice was served on the Tenant in person at 9:00 p.m. on January 2, 2019.

The Tenant agreed she did not pay \$367.00 of the rent due by January 1, 2019. The Tenant acknowledged she did not have authority under the *Act* to withhold rent. She said she was short on money at the time.

The Tenant confirmed she filed the Application January 8, 2019. She testified that she filed late because she did not have help and was searching for help. She said the Notice was served at 9:00 p.m. and so she only had four days to dispute it. The Tenant testified that she was completely lost in the situation and eventually found someone to assist her. I asked the Tenant why she felt lost about what to do when the instructions for disputing the Notice are on the Notice itself. The Tenant testified that she was feeling helpless. The Tenant testified that she did not read the Notice at first and that when she did read the Notice, she started looking for help. I asked the Tenant if she called the RTB for assistance and the Tenant advised she did not. The Tenant testified that she works and does not have a computer at home.

In reply, the Landlord testified that he served the Notice in the evening because that is when the Tenant is home. He said this is not the first 10 Day Notice issued to the Tenant and that he believes she is just trying to stall the process.

The Tenant testified that the basis for her dispute is that she could pay rent on January 8th, but the Landlord refused to accept it. The Landlord disputed that the Tenant tried to pay rent on January 8th. He said the Tenant said she needed more time to pay the rent on or around January 8th and that he did not allow for more time. The Tenant did not submit any evidence to support her position in relation to this issue.

Both parties agreed the Tenant has not paid any rent since the 10 Day Notice was issued. The Tenant testified that this was because the Landlord would not accept the rent. The Landlord testified that the Tenant withheld rent.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

Analysis

The Notice was issued under section 46 of the *Act* which states:

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...

(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.

...

There is no issue the Tenant received the Notice January 2, 2019. The Tenant disputed the Notice January 8, 2019, outside the five-day time limit set out in section 46(4) of the *Act*.

Section 66(1) of the *Act* allows me to extend the time to file the Application and states:

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]. [emphasis added]

Policy Guideline 36 sets out the meaning of exceptional circumstances and states:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

...

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The parties agreed the Notice was served at 9:00 p.m. on January 2nd. I do not find this relevant. The Notice itself outlines what a tenant must do, and the applicable timeline, to dispute the Notice. The Tenant did not outline steps she could have or would have taken if she had received the Notice earlier in the day on January 2nd. In fact, the Tenant said she did not read the Notice at first. In the circumstances, I do not find the timing of service of the Notice affects the analysis.

I do not accept that the Tenant did not know how to dispute the Notice or that she required assistance. Directions for disputing the Notice are on the Notice itself. The Tenant did not provide a compelling reason for requiring assistance. Further, the Tenant acknowledged she did not call the RTB for

assistance which would have been a reasonable step and one I would expect a party to take if unsure how to proceed. I also note that the Tenant is expected to know her rights and obligations under the *Act* and failing to know or understand her rights and obligations is not a sufficient reason to fail to comply with the requirements set out in the *Act*.

The Tenant acknowledged not reading the Notice when she first received it. It is expected that parties will read the correspondence they receive in relation to their tenancies. Not reading the Notice when it is first received is not an excuse for failing to file within the five-day time limit.

The Tenant testified that she works. Work is a foreseeable obligation and parties are expected to file within the time limit set out in the *Act* despite their work schedule. Having to work is not an exceptional circumstance. I also note that the Tenant did not provide any evidence of her work schedule or evidence that she did not have enough time to file the Application.

The Tenant testified that she does not have a computer. A computer is not a requirement for filing the Application as it can be done in other ways than online. I do not accept that not having a computer is an exceptional circumstance or a basis for allowing the Tenant more time to file the Application.

I am not satisfied that the Tenant has shown exceptional circumstances that justify extending the time for filing the Application. Given this, I decline to extend the time to file the Application and the Tenant's request for more time to file is dismissed without leave to re-apply. Further, I will not consider the Tenant's dispute of the Notice and therefore this aspect of the Application is dismissed without leave to re-apply.

Under section 55(1) of the *Act*, I am required to issue a landlord an Order of Possession when a tenant applies to dispute a notice to end tenancy, the dispute is dismissed and the notice complies with section 52 of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act*.

I also note the following. The Tenant acknowledged that she failed to pay \$367.00 of the rent due for January by January 1, 2019 as required. Therefore, the Landlord was entitled to serve the Notice under section 46(1) of the *Act*. The Tenant acknowledged that she did not have authority under the *Act* to withhold rent and therefore section 46(3) of the *Act* does not apply. The Tenant had five days to pay or dispute the Notice. The Tenant testified that she tried to pay rent January 8, 2019. This is not within the five-day time limit and therefore section 46(4)(a) of the *Act* does not apply, even accepting that the Tenant tried to pay rent as stated. The Tenant disputed the Notice; however, she did so late and I have dismissed the Tenant's dispute.

Given I have dismissed the Tenant's dispute of the Notice, and found the Notice complies with section 52 of the *Act*, I issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective two days after service on the Tenant.

Conclusion

The Tenant's request for more time to file the Application is dismissed without leave to re-apply. Therefore, the Tenant's dispute of the Notice is dismissed without leave to

re-apply.

The Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed in the Supreme Court 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 *Act*.

Dated: February 04, 2019

Residential Tenancy Branch