



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to be allowed more time to make an application to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, issued on December 5, 2018 (the "Notice").

Both parties appeared.

Preliminary and procedural matters

It should be noted that during the hearing the tenant was argumentative. The tenant was cautioned several times and due to their continuous interruption their telephone was required to be muted.

Issues to be Decided

Should the tenant be granted more time to make an application to cancel the Notice?
Should the Notice be cancelled?

Background and Evidence

The first issue that I must decide is whether the tenant should be granted more time to make this application.

The tenant testified that they did not dispute the Notice within 5 days, because the person named as the landlord is not their landlord. The tenant stated that an eviction

service company attended the property and said that they do not want the rent and that they only wanted them to vacate the premises.

The landlord testified that they are a tenant under a separate agreement and that they sublet the premises. The landlord stated that their tenancy agreement with the owner of the property is still in effect, nor has the property sold as of the hearing date.

In this case, the landlord MB is a tenant who has a separate agreement to rent the property. MB sublets the property and the original tenancy agreement between MB and their landlord remains in place.

MB does not live in the rental unit and has granted exclusive occupancy to the tenant or in this case the sub-tenant, who is subject to this application. MB is the landlord of the sub-tenant.

I accept the evidence of the MB that they are the landlord; this is supported by evidence filed by both parties.

Filed in evidence are:

1. A rental agreement between the parties that was signed on September 25, 2015, MB is listed as the landlord ; and
2. A shelter information sheet that the tenant provided for financial services, lists MB as the landlord.

Whether MB is legally entitled to sublet the premise is not an issue for me to determine, as that is an issue between MB and their landlord. However, I am satisfied that the only agreement the tenant has to rent the premise is with MB. I find MB is a landlord under the Act and the tenant is a sub-tenant. The tenant provided no supporting documents that would make me believe MB is not the landlord, such a signed agreement with the owner of the property.

In this case, the tenant received the Notice on December 5, 2018, I find the tenant had until December 10, 2018 to make their application for dispute resolution. I find the tenant's application was not filed in accordance with the Act, as they filed their application on January 4, 2019, which is beyond the effective date of the notice.

Director's orders: changing time limits

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.

Since the tenant filed their application beyond the effective date of the notice, I find there is no authority for me to extend the time limit to allow the tenant to make their application. Therefore, I dismiss the tenant's application to be allowed more time to make their application to dispute the notice to end tenancy.

Order of possession for the landlord

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 have reviewed the Notice and the Notice complies with section 52 of the Act. Since the tenant's application was dismissed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant. This Order may be served on

the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: February 12, 2019

Residential Tenancy Branch