



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PODOLLANS CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR LRE MNDCT MT OLC RP RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the 10 Day Notice pursuant to section 47;
- an order restricting the landlord's right to enter the rental suite pursuant to section 70;
- a monetary award for damages and loss pursuant to section 67;
- an order that the landlord comply Act, regulations, and tenancy agreement pursuant to section 62;
- an order that the landlord perform repairs pursuant to section 33; and
- authorization to reduce rent for service and facilities not provided pursuant to section 65.

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.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to more time to file their application?

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord's right to enter the rental unit be restricted? Is the tenant entitled to a monetary award as claimed? Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord be ordered to make repairs? Should the tenant be authorized to reduce rent for facilities or services not provided?

Background and Evidence

The parties agreed on the following facts. Monthly rent for this periodic tenancy is \$1,175.00 payable by the 1st of each month. The tenant failed to pay the rent for April 2019. The tenant received a 10 Day Notice on April 4, 2019 and filed the present application to dispute the Notice on April 15, 2019. The tenant has not paid any rent for the months of April or May 2019.

The tenant testified that they believe they are not obligated to pay the rent as the landlord has failed to maintain the rental unit in an acceptable state for habitation. The tenant submits that they were forced to reside in a hotel as there were bedbugs in the suite.

The tenant said that they initially filed an application to dispute the 10 Day Notice on April 7, 2019 but that application was deemed abandoned as the Residential Tenancy Branch did not receive payment or evidence in support of a fee waiver within 3 days of that application.

The tenant's application includes complaints about the landlord's conduct and condition of the rental suite. The tenant seeks a retroactive rent reduction of \$200.00 for "Over one year of dealing with non repairs broken unit. Drug addicts safety issues. Main door broken. Violence". The tenant seeks a monetary award of \$3,850.00 for "We have lost money due to cost of hydro, loss of enjoyment of home due to non repairs. Uprooted due to bed bug infestation know for months by landlord. Safety for children. Drug addicts". The tenant submits 3 screenshots of text conversations with the landlord complaining about some issues including a balcony door.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on April 4, 2019, and filed the present application for dispute resolution on April 15, 2019. The tenant submits that they filed an initial application on April 7, 2019 but the Branch misplaced the tenant’s fee waiver documents and the application was deemed abandoned, necessitating the tenant to file a separate application.

In accordance with Rule of Procedure 2.6 an application is considered to have 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. While the tenant submits that they submitted all documents for a fee waiver the tenant has failed to provide documentary evidence in support of their submission. I find that there is insufficient evidence that there were exceptional circumstances that would give rise to an extension of the time limit established in the *Act*. Based on the documentary evidence I find that the tenant filed their initial application on April 7, 2019 but failed to provide all of the necessary documents in support of a fee waiver and the application was deemed abandoned. I do not find that the circumstances are extraordinary so that an extension of time is warranted. I dismiss this portion of the tenant’s application.

I find that the tenant received the 10 Day Notice on April 4, 2019 and filed their application for dispute resolution on April 15, 2019, outside of the five days granted under section 46. Accordingly, pursuant to section 46(5) I find that the tenant did not pay rent nor file an application within the five days granted and is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, April 14, 2019.

In any event, the tenant testified that they have not paid rent for April and May 2019. Pursuant to 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant had no right to withhold the monthly rent,

I dismiss the tenant's application to dispute the 10 Day Notice. As I find that the landlord's Notice conforms to the form and content requirements of section 52 of the Act I issue an Order of Possession in the landlord's favour. As the effective date of the Notice has passed I issue an Order of Possession effective 2 days after service.

As I find this tenancy is coming to an end I find it unnecessary to consider the portions of the tenant's application pertaining to an ongoing tenancy.

I find that the tenant has provided insufficient evidence in support of the other aspects of their application. The tenant's submissions consist of subjective complaints, a few screenshots of communication with the landlord and some photographs. I find that the documentary evidence is insufficient to show that there has been any breach by the landlord that would give rise to a basis for a monetary award. I find that the tenant has failed to meet their evidentiary burden, their complaints and perceptions are not sufficient to establish their claim on a balance of probabilities. The tenant's testimony complaining about the landlord and making accusations is insufficient to establish their claim. As the tenant has failed to meet their evidentiary burden I dismiss this portion of the application without leave to reapply.

Conclusion

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

I grant an Order of Possession to the landlord effective **2 (two) days after service** on the tenants. Should the tenants 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: May 31, 2019

Residential Tenancy Branch