



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MT CNR CNC DRI MNDC

Introduction

This hearing dealt with two separate applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for the following remedies:

- 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 a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The landlord acknowledged service of both the tenant’s applications. The tenant had originally applied on March 15, 2019 to cancel a One Month Notice and to dispute a rent increase. On April 10, 2019 the tenant filed a second application to dispute a 10 Day Notice. Both applications were scheduled to be heard together.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to cancel the 10 Day Notice (including more time to make such an application) and application to cancel the One Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the tenant's application for more time to dispute the 10 Day Notice be granted? If yes, should the landlord's 10 Day Notice be cancelled?
Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on April 27, 2015. According to the landlord, the current monthly rent is \$1144.00 plus \$210.00 for utilities payable on the 1st day of each month.

The parties agreed that the tenant received the 10 Day Notice on April 3, 2019. The outstanding rent amount as per the 10 Day Notice was \$785.00 which was due on April 1, 2019.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding. The landlord testified that the rent plus utilities payment is typically received in two separate cheques, one from the tenant and one from the tenant's son. The landlord testified that she received a cheque from the tenant's son in the amount of \$569.00. The landlord testified this was applied towards the outstanding rent plus utilities amount for April 2019. The landlord testified the tenant put a stop payment on his rent cheque for this month.

The tenant's application to cancel the One Month Notice was filed on April 10, 2019. In support of the application to extend a time limit established under the Act to file such an application, the tenant testified that he did not file on time as there was ambiguity with the amount outstanding due to alleged past illegal rent increases and because he had a hearing date scheduled already due to his initial application.

The tenant acknowledged the outstanding rent amount as per the 10 Day Notice was not paid within 5 days after receiving the 10 Day Notice. Rather the tenant argues that a portion of the rent was withheld due to excess rent payments made by the tenant over the last couple years as a result of alleged illegal rent increases.

Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances. The reasons provided for by the tenant for not meeting the five Day time limit to dispute a 10 Day Notice are not exceptional circumstances. The fact that the tenant had already filed a separate application at the time the 10 Day Notice was served, does not take away from the tenant's obligation to file a new application or amend his existing application to dispute the 10 Day Notice.

The tenant's request to extend a time limit to file an application is dismissed.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As the tenant received the 10 Day Notice on April 3, 2019, the tenant's application should have been filed on or before April 8, 2019. The tenant's application was not filed until April 10, 2019.

In accordance with section 46 of the Act, as the tenant failed to take this action within five days, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, April 13, 2019.

I will add that even if the tenant's application to extend a time limit was granted, which it is not, the tenant acknowledged not paying the full amount of the outstanding rent but rather withheld a portion of the rent due to alleged past illegal rent increases. Although the Act permits a tenant to deduct or otherwise apply to recover an illegal rent increase, I find it would have been more appropriate for the tenant to wait for the outcome of the dispute he had already filed rather than withhold an amount of he calculated to be illegal rent increases over a two year period.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the tenancy has ended pursuant to the 10 Day Notice, I make no finding on the merits of the One Month Notice.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 06, 2019

Residential Tenancy Branch