



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GALLOP INVESTMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, ERP, LRE

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"); more time to make the application; orders for the landlord to make emergency repairs to the property; and, orders to suspend or set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I explored service of hearing documents upon each other. Although the tenants sent their hearing package to the landlord using regular mail instead of registered mail or personal delivery, the landlord confirmed receipt of the tenant's hearing package and was prepared to respond to the tenant's application. As such, I deemed the landlord sufficient served pursuant to the authority afforded me under section 71 of the Act. The landlord gave its evidence to the tenant in person and by registered mail which is compliant with service requirements and I admitted this evidence. The landlord also sent evidence to the tenant via text message; however, I did not admit such evidence as sending evidence via text message is not permissible under any service provision provided in the Act.

I confirmed the tenant received the 10 Day Notice in person on April 18, 2019. Under section 46 of the Act, the tenants had until April 23, 2019 to file their application to dispute the 10 Day Notice but they did not do so until April 26, 2019.

During the hearing the tenant orally stated the reason(s) the application was filed late is because he could not find the Residential Tenancy office. The tenant stated he called the Residential Tenancy Branch on April 19, 2019 but it was a holiday so the office was closed. The tenant stated he called the Residential Tenancy office in the morning of April 23, 2019 but he received an automated recording. The tenant could not recall the time he called on April 23, 2019. The tenant stated he had a general idea as to where the office was located so he walked along the street after work on April 23, 2019 and a homeless person pointed him to the Residential Tenancy office but the tenant did not go into the office since he did not have his paperwork with him. The tenant stated he went back to the Residential Tenancy office the

following day but did not complete the application because he forgot some paperwork so he returned the day after that.

Section 66 of the Act provides that an arbitrator may extend or modify a time limit established by the Act only in **exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

Exceptional Circumstances

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 the 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 evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

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 willfully 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*

In this case, I find that the “reasons” for not filing the application to dispute the 10 Day Notice within time do not amount to “exceptional circumstances” that would allow me to extend the time limit for filing the application to dispute the 10 Day Notice. While I appreciate the Residential Tenancy office was closed on April 19, 2019 through April 22, 2019 for the Easter long weekend, I note that the 10 Day Notice was served upon the tenant in person at 12:00 p.m. on April 18, 2019 meaning the tenant had the afternoon of April 18, 2019 and all day April 23, 2019 to contact the Residential Tenancy Branch; yet, by his own description, he called only one time on those two days and decided to wait until after he got off work on April 23, 2019 to try to find the office and without any of his paperwork. Nor, did he return with all of his paperwork the following day. As such, I am of the view the tenant failed to exercise due diligence in ensuring the application was filed on time, or at least much sooner than he actually completed the application. Therefore, I dismiss the tenant’s request to extend the time limit to dispute the 10 Day Notice.

In any event, the tenants did not present any legal basis for cancellation of the 10 Day Notice. On the application the tenant provided the following reasons seeking cancellation of the 10 Day Notice:

“Awaiting disability payments to pay rent”

“Landlord knows of the former problem”

“Brother is the only person with income to pay for all things (ie: rent, phone, hydro)”

During the hearing, the tenant stated the rent is unaffordable and there is a lack of affordable housing in the area but that the tenants would like to stay in the rental unit until affordable housing is built. I informed the tenant that I cannot order the landlord to continue the tenancy due to the tenant’s inability to afford the rent payments due to the landlord. While I appreciate that the lack of affordable housing is an issue in the Province, it does not create an obligation upon the landlord to continue the tenancy because the tenants do not have affordable housing to move to.

It was undisputed that the tenants failed to pay all of the rent that was due to the landlord and did not pay the outstanding rent within five days. The tenants did make payments to the landlord after more than five days receiving the 10 Day Notice but the landlord issued receipts for “use and occupancy only”. Despite the partial payments made by the tenants there still remains a balance owing and no monies have been paid to the landlord for the month of June 2019.

In light of all of the above, I dismiss the tenant's application to cancel the 10 Day Notice. Having dismissed the tenant's application to cancel the 10 Day Notice, I proceed to consider whether the landlord is entitled to an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

On April 18, 2019 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice is in the approved form and is duly completed. The tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants filed to cancel the 10 Day Notice; however, that request has been dismissed for the reasons provided earlier in this decision.

During the hearing, I informed the parties that I was satisfied the landlord was entitled to an Order of Possession. I explored the effective date for the Order of Possession. The landlord requested an Order of Possession as soon as possible but was agreeable to receiving one that is effective seven (7) days after service.

As a matter of record, the landlord also stated that if the tenants vacate the rental unit in compliance with the Order of Possession the landlord shall waive entitlement to recover unpaid rent from the tenants. The tenant indicated he understood this.

Having found this tenancy at an end, I find it unnecessary to hear the tenant's request for repair orders or to set conditions on the landlord's restricted right to enter the rental unit. The landlord does remain obligated to comply with section 29 of the Act until possession of the rental unit is returned to the landlord, either by the tenants or by way of the bailiff.

Analysis

Section 55 of the Act provides for circumstances where a landlord will be provided an Order of Possession. Section 55(1) provides 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.

In this case, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent that meets the form and content requirements of the Act. The tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants filed to dispute the 10 Day Notice but the tenant's application has been dismissed. Therefore, I find all of the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

I provide the landlord with an Order of Possession effective seven (7) days after service of the Order upon the tenants.

Conclusion

The tenant's application is dismissed in its entirety. The landlord is provided an Order of Possession effective seven (7) days after service upon the tenants.

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: June 04, 2019

Residential Tenancy Branch