



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, PSF, RP, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy For Cause (the “Notice”), issued on June 30, 2019, for a monetary order for monetary loss or other money owed, to reduce rent for repairs, services or facilities agreed upon, but not provided, and to have repairs made to the unit.

The tenant and the tenant's advocate attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The advocate stated that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail, a Canada post tracking number was provided as evidence of service. Further, the landlord submitted evidence in response to the tenant's application. I find that the landlord has been duly served in accordance with the Act.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy.

The balance of the tenant's application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Based on the testimony of the tenant, I find that the tenant was served with the Notice on July 15, 2019. This is the date they acknowledged in their application.

The advocate stated that the tenant came to their office on July 25, 2019, and their application was filed which was within the statutory time limit. The advocate stated that the tenant had no power, and other issues going on with the tenancy and it was the first date that was available.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant's application was submitted online on July 25, 2019 at 4:12 pm, at a time which the Residential Tenancy Branch or a Service BC office would not be open. The file status was set to ready to pay.

The Residential Tenancy Branch Rules of Procedures state the following.

2.4 Submit an Application for Dispute Resolution

Applications for Dispute Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application. **This three-day period for completing payment is not an extension of any statutory timelines for making an application.**

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has 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 to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 **is not an extension of any statutory timelines for making an application.**

In this case, the documents for a fee waiver were not submitted to the Residential Tenancy Branch until July 27, 2019. I find the tenant's application was not made until July 27, 2019, which was past the statutory time limit of July 25, 2019.

The tenant's application was not amended to request more time to dispute a notice to end the tenancy.

I have reviewed the Notice; the Notice is completed in accordance with section 52 of the Act.

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy

...

(4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days after** the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not 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 by that date.

Based on the above, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice which was August 15, 2019. Therefore, I must dismiss the tenant's application.

The tenant has indicated that they have given the landlord rent for October 2019. Therefore, I find it appropriate to extend the occupancy date to October 31, 2019.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **1:00 PM on October 31, 2019**. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant did not apply to dispute the Notice within the statutory time limit. The tenant did not amend their application to request more time to dispute a notice to end tenancy. The tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

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: September 30, 2019

Residential Tenancy Branch