



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC CNR MT

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") and 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 66;
- cancellation of the 10 Day Notice pursuant to section 46; and
- cancellation of the 1 Month Notice pursuant to section 47.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant NS attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they received a 1 Month Notice and 10 Day Notice issued by the landlord on or about November 29, 2019. The tenant filed their application for dispute resolution on December 5, 2019 and served their application and evidence on the landlord that same date by registered mail. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on December 10, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Should the tenants be afforded more time to file their application?

Should the 10 Day Notice and 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant testified that they received a 1 Month Notice and 10 Day Notice on or about November 29, 2019. The tenants filed their application to dispute both notices on December 5, 2019. No copy of either notices were submitted into evidence.

Analysis

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice to End Tenancy for Unpaid Rent a tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 47 provides that upon receipt of a 1 Month Notice to End Tenancy for Cause a tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the tenant testified that they believe received both notices on or about November 29, 2019. The tenants filed their application for dispute resolution on December 5, 2019. In the absence of documentary evidence or other testimonial materials to support that the notices were served on November 29, 2019, I find I am unable to determine the precise date when the notices were served. As such, I am unable to find that the tenants did not file their application to dispute the notices within the timeline provided under the *Act*. While the tenant seeks an extension of time to file their application, I find it is not necessary.

Residential Tenancy Branch Rule of Procedure 7.4 provides that:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The landlord failed to attend the hearing and neither party submitted into evidence a copy of either of the notices. What documentary evidence was submitted consists of indistinct photographs and copies of correspondence.

As the landlord did not attend the hearing to present evidence, I find the landlord has failed to satisfy the burden of proof to show the grounds for either the 1 Month Notice or the 10 Day Notice and I therefore allow the tenant's application to cancel both of the Notices.

Conclusion

The 1 Month Notice and 10 Day Notice are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

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: January 27, 2020

Residential Tenancy Branch