



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LRE MT OLC

Introduction

This hearing dealt with the tenant's 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 a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Each party represented themselves with assistance.

As both parties were present service 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 any of the relief sought?

If the tenant is unsuccessful in cancelling a 10 Day Notice, is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in February 2019. Monthly rent is \$700.00 payable on the first of each month. No security or pet damage deposit was collected.

The landlord submits that the tenancy is in arrear and that they issued a 10 Day Notice to End Tenancy for Unpaid Rent. No copy of any 10 Day Notice was submitted into evidence by either party. The tenant indicated on their application that they received the 10 Day Notice on or about November 22, 2019.

The tenant filed their application to dispute the 10 Day Notice on December 4, 2019. The tenant submits in their application that they are filing their application after the dispute period because:

I emailed my proof of income and expenses. I was not given an option to upload it to the file.records will show that it was emailed to your office within the aloted time. I am requesting an extension based on a difficulty with understanding how to add my proof of income

The tenant provided a copy of a release of information form directing the Ministry of Social Development, permitting the release of income information dated November 28, 2019. The tenant did not provide any other documentary information showing they had applied for a waiver of filing fees.

The tenant testified that they believe the landlord harasses them and that they have entered the rental unit without authorization or notice. No documentary evidence was provided in support of the tenant's testimony.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenants 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 submits that they were served with a 10 Day Notice on November 22, 2019, and filed their application to dispute the notice on December 4, 2019, after the statutory time limit had expired.

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.

The tenant submits that they attempted to file their application within the statutory deadline but were unable to do so because they had “difficulty with understanding” the filing procedures. The tenant provided documentary evidence showing that they attempted to provide information on November 28, 2019. I find that even if the tenant was successful in their earlier attempt, filing a fee waiver on November 28, 2019 would still have been outside of the statutory time limits. I find that the tenant has failed to show that there are any extraordinary circumstances that would give rise to an extension of time limits. I dismiss the tenant’s application for an extension of time.

Pursuant to subsection 46(5) a tenant who does not file an application within the timeline provided in the *Act* is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. Accordingly, I dismiss the tenant’s application to dispute the 10 Day Notice as they have failed to file an application to dispute the notice or pay the outstanding rent in the timeline provided.

While I have dismissed the tenant’s application in the absence of a 10 Day Notice submitted into documentary evidence I am unable to determine that a proper notice conforming with the form and content requirements of the *Act* was issued. Therefore, I decline to issue an Order of Possession.

The tenant’s submissions consist of subjective complaints, suppositions and conjecture. I find there is little evidence that the landlord has violated the *Act*, regulations or tenancy agreement or that they have accessed the rental unit in contravention of the *Act*. I find that the tenant’s beliefs are insufficient to meet the evidentiary onus on a balance of probabilities and dismiss the balance of the tenant’s application.

Conclusion

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

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 28, 2020

Residential Tenancy Branch