



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC-MT, FFT

Introduction

In this dispute, the tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”), they sought to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), pursuant to section 47 of the Act, and, they sought to extend the time in which to apply to dispute both notices, pursuant to section 66 of the Act. In addition, the tenant sought recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on February 14, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 16, 2020. The tenant and the landlord attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence. (I briefly note that an unrelated third party had accidentally dialled into the telephone conference but exited after a couple of minutes.)

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. Thus, not all of the parties’ testimony may necessarily be reproduced below.

Issues

1. Is the tenant entitled to an extension of time in which to dispute the notices?
2. Is the tenant entitled to an order cancelling the 10 Day Notice?
3. Is the tenant entitled to an order cancelling the One Month Notice?
4. If the tenant is not entitled to cancel either order, is the landlord entitled to an order of possession, pursuant to section 55 of the Act?
5. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy began on September 1, 2019. Monthly rent is \$1,100.00 and is due on the first of the month. There was no security or pet damage deposit. A copy of a written tenancy agreement was submitted into evidence.

On February 2, 2020, the landlord served the tenant in-person with the 10 Day Notice, a copy of which was submitted into evidence. The 10 Day Notice indicated that the tenancy was to end because the tenant had not paid rent of \$1,100.00 due February 1, 2020. On that same date, at the same time, the landlord also served the tenant in-person with the One Month Notice, a copy of which was submitted into evidence. The One Month Notice stated that the tenancy would end because of the tenant's repeated late rent. The landlord testified that the tenant was late paying rent for September, October, November and December 2019, and late for January and February 2020.

The landlord had made it clear to the tenant, by way of text or email communication, that the tenant needed to pay rent on time, when it was due. She reiterated that she was not in a position to "subsidize" the tenant. In support of the argument for late payment of rent, the landlord submitted several copies of emails which include e-transfers of rent. The e-transfer emails are dated for dates occurring after the first.

The tenant testified that she had fallen behind due to a back injury caused by slipping off some steps. She missed ten days of work, got behind on rent, and was trying to get extra work in an effort to catch up. The tenant has experienced personal difficulties over the past several months, including sick family and financial issues with an ex-partner.

Regarding the 10 Day Notice, the tenant explained that if the landlord had waited a few hours more, she would have been able to transfer her the rent that was due the day before. Further, she testified that she had sent the various alleged late rent payments on the first of the month, but that the landlord chose to accept (or receive) them a few days later. In response, the landlord testified that the emails are dated on the date that the e-transfers were sent by the tenant.

The tenant submitted that while she "has had some bumps along the way," she is finally in a place where "everything is in order."

The landlord reiterated that the tenant has repeatedly not paid rent on time, and that the reasons for the lateness vary.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Extension of Time to Apply for Dispute Resolution

I will first address the issue of extending the time in which a tenant may apply to cancel a notice. The 10 Day Notice gave the tenant five days in which to either pay the rent or file for dispute resolution. The One Month Notice gave the tenant ten days in which to file for dispute resolution. Both notices were served in-person on February 2, 2020, which meant that the tenant had until February 7 and February 12 to dispute the 10 Day Notice and the One Month Notice, respectively. The tenant did not successfully file for dispute resolution until February 14, 2020. She explained that she had tried to file a dispute application on-line within days of receiving the notices, but that the Residential Tenancy Branch system did not accept the application.

Section 66(1) of the Act states that an arbitrator “may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.”

Based on the tenant’s testimony and taking into account my personal knowledge that the Residential Tenancy Branch’s on-line dispute resolution system was off-line over the period in which the tenant attempted to file her application, I find that this was an exceptional circumstance (and one that was outside the control of either party), thus permitting me to extend the time limits. As such, I extend the time limits and will now consider the notices.

2. 10 Day Notice to End Tenancy for Unpaid Rent

Where a tenant applies to dispute a notice to end a tenancy, the onus shifts to the landlord to prove, on a balance of probabilities, the reason for which a notice was given. I will first address the 10 Day Notice.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on February 1, 2020. It is of significant importance that the tenant did not dispute that they had not paid rent when it was due on February 1. Indeed, the tenant testified that “had [the landlord] waited a few hours” longer on February 2 after she served the notices, the landlord would have received the rent. There is, I conclude, no dispute by the tenant that she did not pay rent when it was due on the first of February.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground – that is, non-payment of rent – for which the 10 Day Notice was given. As such, I dismiss the tenant’s application for an order cancelling the 10 Day Notice.

Section 55(1) of the Act states that

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.

Having reviewed the 10 Day Notice I find that it complies with section 52 of the Act. Accordingly, the landlord is granted an order of possession.

3. One Month Notice to End Tenancy for Cause

Having dismissed the tenant’s application for an order cancelling the 10 Day Notice, and having granted the landlord an order of possession, I need not consider the One Month Notice further.

4. Recovery of the Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A

successful party is generally entitled to recovery of the filing fee. As the tenant was unsuccessful, I dismiss the claim for reimbursement of the filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

It should be noted, however, that most orders of possession (with the exception of those issued under sections 56 and 56.1 of the Act) are not enforceable while the provincial state of emergency is in effect, as per Ministerial Order No. M089, [*Residential Tenancy \(COVID-19\) Order*](#), MO 73/2020.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 16, 2020

Residential Tenancy Branch