



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

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 the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord via the landlord's mother in person on October 19, 2020 with the notice of hearing package and the tenant's submitted documentary evidence. The landlord confirmed he did not submit any documentary evidence.

I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

Is the tenant entitled to more time to make an application to cancel the 10 Day Notice?

The tenant stated that due to being unable to submit his application online due to a BCeID issue the tenant was prevented from filing it until October 14, 2020. Both parties confirmed that the tenant received the 10 Day Notice dated October 6, 2020 on October 6, 2020 posted to the door. The tenant stated that the BCeID was resolved by government services on October 14, 2020 and the application was filed the same day.

The landlord stated that the application was filed late but provided no comment on the tenant's reasons for delay.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, "36. *Extending a Time Period*" provides me with guidance as to the interpretation of section 66:

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 strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

In this case, I find that the tenant's reason for requesting more time to make the application is exceptional as a "BCeID" technical issue prevented him from filing the application within the allowed timeframe. As such, I order that the tenant's application for more time is allowed. The hearing shall continue.

Issue(s) to be Decided

Is the tenant entitled to cancel the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated October 6, 2020. The 10 Day Notice states that the tenant failed to pay rent of \$7,110.00 that was due on October 1, 2020 and provides for an effective end of tenancy date of October 17, 2020.

The tenant confirmed that rent is in arrears but argues that the landlord's sum is incorrect. The landlord was only able to provide partial information that the tenant was in arrears of \$1,375.00 for May 1, 2019. The landlord was unable to provide any further details.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlord served the tenant with a 10 Day Notice dated October 6, 2020 by posting it to the rental unit door. However, the tenant has argued that the amount listed on the 10 Day Notice is not accurate. The tenant confirmed that he was in arrears, but is unable to determine by how much. The landlord was unable to provide any particulars of the \$7,110.00 indicated on the 10 Day Notice stating only that the tenant owed \$1,375.00 for May 1, 2019.

I find in the absence of any particulars by the landlord that the 10 Day Notice dated October 6, 2020 is set aside. The landlord was unable to provide any details of the \$7,110.00 indicated on the notice. On this basis, the tenant's application to cancel the 10 Day Notice dated October 6, 2020 is granted.

Conclusion

The tenant's application to cancel the 10 Day Notice dated October 6, 2020 is granted.

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 18, 2021