



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Victoria Native Friendship Centre and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT

Introduction

This hearing was convened in response to an application made December 4, 2020 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. More time to make an application to cancel a notice to end tenancy - Section 66.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Does the Tenant require more time to make its application to cancel the notice to end tenancy?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on October 26, 2020. Rent of \$511.00 is payable on the first day of each month. On December 1, 2020 the Landlord posted a 10-day notice to end tenancy for unpaid rent (the “Notice”) on the door of the unit. The Notice is dated January 12, 2020, sets out an effective date of December 14, 2020 and sets out unpaid rent of \$511.00 wed January 12, 2020.

Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the agreed facts that rent is payable on the first day of each month and that the Landlord served the Notice on the first day of December 2020, I find that the Landlord served the Notice earlier than allowed under the Act. Further, given the agreed facts that the Notice sets out unpaid rent for a date after the Notice was served, I find that the Notice is not valid for its stated purpose. For these reasons I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues. I note that the Tenant made its application within the time allowed after having received the Notice and the Tenant does not therefore require more time to make its application.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: March 01, 2021

Residential Tenancy Branch