



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, LRE, CNC, RP, RR, OLC, FFT, CNR, ERP, OPC, OPR

Introduction

The tenant seeks various relief under the *Residential Tenancy Act* (“Act”), including a dispute of a *10 Day Notice to End Tenancy for Unpaid Rent* (the “10 Day Notice”) and a *One Month Notice to End Tenancy for Cause* (the “One Month Notice”). By way of cross-application the landlord seeks orders of possession on the 10 Day Notice and the One Month Notice.

Both parties attended the hearing on March 1, 2022. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant’s application, I find that the claims other than the application to dispute the 10 Day Notice and the One Month Notice (collectively, the “Notices”) are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue. As such, all forms of relief sought by the tenant, other than the dispute of the Notices, are dismissed *with* leave to reapply.

Issues

Is the tenant entitled to either of the Notices being cancelled?

If not, is the landlord entitled to an order of possession for either of the Notices?

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began on February 1, 2016. Monthly rent is \$1,127.50. There is a written tenancy agreement in evidence.

On January 2, 2022, the landlord (through his agent) served the 10 Day Notice on the tenant. The tenant apparently refused to accept the 10 Day Notice and so the agent placed the 10 Day Notice in the tenant's mailbox. A completed copy of the 10 Day Notice, along with a copy of a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities, was in evidence.

The tenant filed a Tenant Request to Amend a Dispute Resolution Application on January 12, 2022. In the amendment request the tenant stated that he had misread the eviction notice terms to pay rent within five days. Moreover, that the reason for the delay in paying the rent was due to "health & safety concerns regarding a rat infestation."

On January 12 or January 13, 2022, the tenant paid the rent, which was indicated on the 10 Day Notice to be owing in the amount of \$1,145.00. The landlord subsequently issued a receipt for the rent, but the receipt indicated that the rent was received for use and occupancy only.

For the reasons set out below, no other evidence shall be reproduced in this decision.

Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice ([section 46\(5\)](#) of the Act).

The tenant's application to amend his claim (that is, to dispute the 10 Day Notice) indicates that the 10 Day Notice was served in person on January 2, 2022. The landlord's evidence is that the 10 Day Notice was left in the mailbox on that same date.

Section 90(d) of the Act states that if a document is given or served in a mailbox or mail slot then the document is deemed to be received on the third day after it is left. Thus, in this case, the 10 Day Notice was deemed to have been received on January 5, 2022. As set out in the 10 Day Notice, and under section 46(5) of the Act, the tenant had until January 10 to either pay the rent or dispute the 10 Day Notice. He did neither. And it was not until January 12 that he filed an amendment to dispute the 10 Day Notice and no rent was paid until either January 12 or January 13, 2022.

Given these facts, it is my finding that the tenant is presumed to have accepted the 10 Day Notice and therefore he is required to vacate the rental unit. Accordingly, the tenant's application to dispute the 10 Day Notice is dismissed and the landlord's application for an order of possession based on the 10 Day Notice is granted.

A copy of the order of possession is issued in conjunction with this decision, to the landlord. The landlord (or his agent) must serve a copy of the order of possession on the tenant by any means of service permitted under [section 88](#) of the Act.

As the tenancy is ended by way of the 10 Day Notice, it is unnecessary for me to consider evidence related to the issuing of the One Month Notice.

Conclusion

The tenant's application to dispute the Notices is dismissed.

The landlord's application for an order of possession is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: March 1, 2022

Residential Tenancy Branch