



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 EXECUTIVE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 46;
- More time to cancel a Notice to End Tenancy pursuant to section 66

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant confirmed his email address to which a copy of the Decision shall be sent. The tenant stated he was not recording the hearing.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 13 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the

tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that he personally served the agent of the landlord JS (whose full name appears on the first page) with the Notice of Hearing and Application for Dispute Resolution on May 4 or 5, 2022 when the agent came to the tenant's apartment. The tenant testified the agent repeatedly comes to the tenant's unit on behalf of the landlord to ask when he was moving out as renovations are underway. The tenant testified he handed the Notice of Hearing to the agent who took a picture of it.

Pursuant to sections 89 and 90 and the credible testimony of the tenant, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on May 5, 2022.

1. Preliminary Issue – Application for More Time under section 66

The tenant applied for more time to dispute the 10 Day Notice.

The tenant provided testimony that he was out of town working for a week on a construction job when the landlord posted the 10 Day Notice on the tenant's door. Upon his return on April 21, 2022, the tenant found the Notice. The tenant testified he did not know when it was posted.

The tenant filed the Application for Dispute Resolution the following day, April 22, 2022. In the event the filing may have been outside the five-day period to dispute, the tenant requested more time to file.

I find I am unable to determine when service took place as the landlord did not attend the hearing.

The tenant submitted a copy of the 10 Day Notice which is in the standard RTB form. The Notice does not include an effective date.

As I am unable to determine the effective date of the Notice, I find any extension does not contravene section 66 (3).

I also find that the tenant has submitted credible testimony of “exceptional circumstances” under section 66 for any late submission.

For the reasons set out, as no evidence was submitted to the contrary, I find the tenant applied within the Act’s timelines to dispute the Notice

Preliminary Issue – Onus on Landlord

I explained to the tenant that section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the tenant’s Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord’s 10-Day Notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I find the landlord has failed to meet the onus to prove the reasons to end the tenancy.

I therefore order that the tenant’s application to cancel the Notice to End Tenancy is granted.

I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Conclusion

I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

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: August 08, 2022

Residential Tenancy Branch