



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, RP

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

- an extension of the time limit to dispute the 10 Day Notice (the “10-Day Notice”) pursuant to sections 46 and 66;
- an order cancelling the 10-Day Notice of Unpaid Rent pursuant to section 46; and,
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62.

WP, the landlord and WT, agent for the landlord appeared at the hearing. WT testified that she is the wife of the landlord and that she manages the tenancy. WT provided all testimony on behalf of the landlord during the hearing.

YC the tenant appeared at the hearing.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant testified, and WT confirmed, that he served the landlord the notice of dispute resolution package and supporting documentary evidence. WT testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to more time to cancel the landlord's 10-Day Notice?

Should the landlord's 10-Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties confirmed the following details of the tenancy. The tenancy commenced on August 21, 2021, by way of written agreement. Rent is \$3,654.00 due on the first of the month. The landlord collected a security deposit of \$1,800.00 which they continue to hold in trust.

WT testified and the tenant confirmed that the 10-Day Notice was personally served on the tenant on January 9th, 2023. WT testified and the tenant confirmed that at the time the 10-Day Notice was issued rent had not been paid for the month of January 2023 and \$3,654.00 was outstanding.

The tenant testified that they paid all outstanding rent up to and including the month of March 2023 prior to the hearing. The landlord checked their bank account during the hearing and confirmed that all outstanding rent had been paid in full. The landlord testified that they are seeking an Order of Possession.

The tenant testified that they had a very difficult year financially. They testified that they are required to support family living in Syria, and they understand that the landlord has been very patient with them over the course of the tenancy. The tenant testified that they require more time to dispute the 10-Day Notice because when they received the 10-Day Notice, they had just received news that their uncle in Syria had passed away and they were saddened for about four days.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy

if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The parties agree that the 10-Day Notice was issued because the tenant had not paid rent for the month of January 2023 in the amount of \$3,654.00. Therefore, I find that the Notice was given for a valid reason, namely, the non-payment of rent.

Based on the testimony of the parties, I find that the 10-Day Notice was served in accordance with section 89 of the Act on January 9, 2023. In accordance with section 53(2) of the Act, the effective date of the 10-Day Notice is corrected to January 19, 2023.

Section 46(4)(b) allows a tenant within five days of receiving the 10-Day Notice to dispute the Notice by making an application for dispute resolution. In this case, the tenant did not make an application for dispute resolution within the required five days and therefore, they are seeking an extension of the time limit to dispute the 10-Day Notice.

Records at this office confirm that the tenant filed an application disputing the 10-Day Notice on January 24, 2023.

Residential Tenancy Policy Guideline 36 discusses the Director's authority to extend a time limit established by the Act in exceptional circumstances. Page 2 of the Policy Guideline states:

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

Further, section 66(3) of the Act states:

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.

The undisputed evidence before me is that the tenant filed an application to dispute the 10-Day Notice on January 24, 2023, which is a date that is beyond the corrected effective date of the notice, January 19, 2023. In accordance with Policy Guideline 36 and section 66(3) of the Act, I find that the tenant is not entitled to an extension of the time limit to dispute the 10 Day Notice. As a result, the tenant's application to dispute the 10-day Notice is dismissed without leave to re-apply.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

As the tenancy is ending, the tenant's application for the landlord to make repairs to the rental unit is no longer necessary and, on that basis, I dismiss this application without leave to re-apply.

Conclusion

The landlord is granted an order of possession which will be effective two days after service upon the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: March 14, 2023

Residential Tenancy Branch