



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) to be allowed more time to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on February 16, 2023, and received on the same date in person.

Both parties appeared. Although the tenant and their advocate were almost 10 minutes late.

Preliminary and Procedural matters

In the communication tab of the digital file, the Residential Tenancy Branch staff made a note indicating there is another application for dispute resolution filed by the tenant on March 2, 2023, disputing a different 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 2, 2023. The advocate stated that they did not make this application on behalf of the tenant. The tenant indicated that they do not remember making the application. I will address this later in my Decision.

Issue(s) to be Decided

Should the tenant be granted more time to dispute the Notice?

Background and Evidence

The landlord confirmed that the tenant’s application is correct that the tenancy began on August 1, 2022. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant.

The landlord confirmed with the tenant's application that they served the tenant in person on February 16, 2023, with the Notice, which was witnessed by SS. The landlord confirmed the tenant did not pay the rent.

The landlord stated that the tenant was also issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "2nd 10 Day Notice") issued on March 2, 2022, that rent was also unpaid; however, they were never served the application for dispute resolution and notice of hearing.

The advocate for the tenant stated they did not realize the tenant had not filed their application within the statutory time limit. The advocate stated the rent for February 2023, was not paid because the landlord originally told the tenant they did not have to pay the rent if the tenant moved out of the unit due to renovation. The advocate stated that tenant had realized their rights under the Act and wanted the landlord to issue a proper notice to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's notice: non-payment of rent

46 (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect,
or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

66 (1)The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

In this case, the tenant admitted in their application that they received the Notice, in person, on February 16, 2023. I find the tenant had five days after the Notice was received to pay the rent or to make an application for dispute resolution. I find the last day for the tenant to pay the rent or make their application was February 21, 2023. The tenant file their application on February 24, 2023, seeking more time to dispute the Notice. The tenant submitted no evidence that an exceptional circumstances occurrent that prevented them from filing their application on time, such as being hospitalized.

I find it would be inappropriate to grant the tenant more time to dispute the Notice. I find the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, which was February 28, 2023, the date within the Notice. Therefore, I dismiss the tenant's application without leave to reapply.

As no occupancy rent has been paid for February or March 2023, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I have not granted the landlord a monetary order for unpaid rent for February and March 2023, as required by section 55 (1.1) of the Act, as the landlord indicated if the tenant vacates in accordance with the order of possession they will waive their rights to the unpaid.

As earlier indicated in my Decision the tenant filed to dispute the 2nd 10 Day Notice, issued on March 2, 2023. The advocate did not submit it on the tenant's behalf, nor does the tenant remember filing the application. In any event, I find it appropriate to dismiss the tenant's application, as the landlord has not been served as required by the Act, and I have found the tenancy has legally ended. The hearing schedule for March 28, 2023, at 2:30 pm is cancelled.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession. The hearing scheduled for March 28, 2023, is cancelled.

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 21, 2023

Residential Tenancy Branch