



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR

Introduction

This hearing dealt with the tenant's application to cancel the landlord's notice to end tenancy for unpaid rent. Both parties participated in the hearing and gave affirmed testimony.

By letter dated July 7, 2009, the tenant's advocate requested an adjournment of the hearing in view of her inability to attend the hearing with the tenant. The landlord's agent objected to the request, and in light of the period of time which has already elapsed since the tenant first applied for dispute resolution, the request was denied.

Issue to be decided

- Whether the tenant is entitled to cancellation of the landlord's notice to end tenancy for unpaid rent

Background and Evidence

Previously, a hearing was convened and a decision and order were issued on December 10, 2008, in relation to this same tenancy and rent not paid since October 2008. The tenant applied for an order of possession and an order requesting that the landlord comply with the tenancy agreement and the Act.

In the decision, the dispute resolution officer found that the landlord's agent entered into a tenancy agreement with the tenant effective September 1, 2008. The dispute resolution officer further found that the "landlord has then attempted to end this tenancy, outside of the parameters of the Act by declining the tenant's rent through his disability....." Additionally, in the decision, the dispute resolution officer stated:

I Order that the landlord immediately grant this tenant exclusive possession and occupation of the rental unit and comply with all the obligations required under the tenancy agreement and the Act. I also find that the landlord must immediately complete a new shelter information form for the tenant's disability funds to allow the payment of rent. I find that the landlord is unable to end this tenancy due to non-payment of rent until the landlord complies. The current non-payment of rent is directly due to the landlord's actions by declining the shelter information previously provided.

Subsequently, documentation required by the ministry was completed and the tenant's rent of \$600.00 per month has been paid directly to the landlord's agent on a regular basis from January 2009 to the present. However, it appears that as a result of the earlier delay on the part of the landlord in completing the documentation required by the ministry, the landlord did not receive payment for rent from the ministry for the months of October, November or December 2008. Arising from this, the understanding is that the landlord issued a notice to end tenancy for unpaid rent which led to this further application from the tenant. A copy of such notice was not before me in evidence.

The hearing convened on May 27, 2009 was adjourned with the hope that, in the interim, the tenant, the tenant's advocate, the landlord, the landlord's agent and ministry personnel could resolve the problem of unpaid rent for the 3 month period in question. However, for any number of reasons, liaising between the parties did not occur and the status of the tenancy must now be reiterated here.

Analysis

Black's Law Dictionary defines the rule of *res judicata* in part, as follows:

Rule that a final judgment rendered by the court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

As earlier noted, a decision and order previously addressed the tenancy involving these same parties, the same rental unit and the same period of time in question. In summary, the matters before me have already been adjudicated upon. I find, therefore, that the December 10, 2008 decision and order that granted the tenant an order of possession constitute a bar to the subsequent attempt by the landlord to end tenancy on the basis of unpaid rent.

The parties have the option of liaising together and with ministry personnel in regard to exploring resolution of the problem of unpaid rent for the 3 month period in question.

Conclusion

Pursuant to all of the above, I hereby cancel the landlord's notice to end tenancy. The order of possession earlier granted to the tenant by decision dated December 10, 2008 remains in full force and effect, as does the tenancy.

DATE: July 10, 2009

Dispute Resolution Officer