

DECISION

Dispute Codes MT CNC FF

Preliminary Issues

The Tenant has applied for an Order to allow the Tenant more time to make an application to cancel a 1 Month Notice to End Tenancy that was issued to the Tenant on July 30, 2009.

The above mentioned notice was posted to the Tenant's door on July 30, 2009; the Tenant is deemed to have received the notice August 2, 2009, (three days after it was posted to the door) in accordance with section 90 of the *Residential Tenancy Act* (Act); and the Tenant filed an application for dispute resolution on August 10, 2009, eight days after the notice was deemed to have been received.

The Tenant has filed his application to dispute the 1 Month Notice to End Tenancy within the required time as set out in section 47(4) of the Act. Based on the aforementioned I hereby dismiss the Tenant's request for more time to make his application. The hearing proceeded as scheduled.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord's Agent by the Tenant on approximately August 15, 2009. The Agent confirmed receipt of the hearing package.

The Landlord's Agent (the Agent), the Tenant, and the Tenant's Witness appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to an Order under sections 47 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts of the tenancy are the fixed term tenancy began on May 1, 2009 and is set to expire on April 30, 2010. The rent is payable on the first of each month in the amount of \$3,250.00 and the Tenant paid a security deposit of \$1,625.00 on May 1, 2009. The tenancy was initially set up as having "no pets allowed" however after the Tenant brought a dog into the rental unit, without prior permission, the Agent and Landlord negotiated a new tenancy agreement with the Tenant, allowing the dog to stay in the rental unit, and on approximately June 1, 2009 the Tenant paid a pet deposit in the amount of \$1,625.00.

The Tenant's Witness testified that she lives with the Tenant at the rental unit and that she and the Tenant received the 1 Month Notice to End Tenancy posted to their door on July 30, 2009 at approximately 7:30 p.m. The Witness argued that while the notice was actually received on July 30, 2009, it is not deemed to be received until three days later so the move out date, or effective date, of the notice of August 31, 2009 was incorrect.

The Tenant's Witness testified that she did not receive written notification of the breach of material term and that she only received verbal communications relating to the breach.

The Agent testified that the 1 Month Notice to End Tenancy was issued for two reasons, the first was because the Tenant brought a dog into the rental unit without prior approval and the second was because the Tenant failed to remove storage which was not permitted in the Strata rules, interfering with the Landlord's relationship with the Strata Corporation which caused the Landlord to suffer fines issued by the Strata Corporation.

The Agent argued that the Tenant was issued written notice on May 4, 2009 of the Tenant's breach of allowing a pet in the rental unit, a copy of which is included in the Agent's evidence. The Agent testified that it was near the end of May 2009 that the Owner agreed to allow the Tenant to keep the dog so a new tenancy agreement was entered into and the Tenant paid a pet deposit on approximately June 1, 2009.

The Agent testified that the second breach was surrounding the Tenant storing items in the carport which was against Strata rules. The Agent argued that he left a voicemail for the Tenant on June 29, 2009 relating the complaints of storage, and that he spoke directly to the Tenant the next day, July 1, 2009 and that the Tenant told the Agent that the Tenant had spoken to the maintenance person and that the issue had been resolved and the Tenant would be removing the stored items by the required deadline.

The Agent argued that on July 7, 2009 the Landlord was issued \$400.00 in fines because the Tenant did not remove the stored items as previously agreed to. The

Agent referred to his documentary evidence of an e-mail sent to the Tenant on July 7, 2009, referring to an attached e-mail, which supports that the Owner was issued fines from the Strata Corporation and that the Tenant was required to issue a cheque to pay for the fines.

The Agent stated that additional telephone, in-person, and e-mail conversations took place whereby the Tenant continued to be “belligerent” about removing his property and paying the fines. The Agent testified that the Strata Corporation finally towed the Tenant’s snowmobile on July 16, 2009 and the Tenant has failed to pay the \$400.00 in fines. The Agent testified that the Tenant continued to ignore his responsibilities and the 1 Month Notice to End Tenancy was issued on July 30, 2009. The Agent stated that he has attended the hearing and requests that an Order of Possession be issued to end the tenancy as soon as possible.

The Tenant testified that he feels the 1 Month Notice to End Tenancy is invalid because the Landlord wrote an effective move out date of August 31, 2009. The Tenant confirmed that he received both pages of the notice on the evening of July 30, 2009, however the notice is not deemed to be received for three days after it was posted to the door so the Tenant would not have been deemed to receive the notice until August 2, 2009 which means the Landlord should not have written an effective move-out date of August 31, 2009.

The Tenant testified and confirmed that he had discussions on July 1, 2009 with a Strata maintenance person and the Agent about the problem with the Tenant storing items in the carport. The Tenant argued that he was not sure he remembered receiving a telephone message from the Agent about the storage issue.

The Tenant argued that he did not receive notification about moving his stored items, then testified that he agreed to move the items stored in the carport, and later in his testimony contradicted himself again as he referred to the verbal and e-mail communications he received from the Agent, the Agent’s employee, and the maintenance person regarding the issue of storage in the carport.

The Tenant testified that he received copies of the Strata bylaws about three weeks after taking possession of the rental unit on May 1, 2009. The Tenant argued that he has not taken the time to read the Strata Rules and as a result was not aware of the storage limitations.

When asked why he did not move his stored items before the deadline or extended deadline, the Tenant argued that it takes time to look for a storage unit. The Tenant confirmed that he promised the maintenance person that he would have the items

moved by Sunday July 12, 2009 and that the snowmobile was still in the carport on July 16, 2009 which is when it was towed by the Strata Corporation.

The Tenant confirmed that he has refused to pay the \$400.00 fines issued by the Strata to the Owner because the Tenant argued that he has not received copies of the fines.

The Agent testified that his employee e-mailed a copy of the e-mail fines with the July 7, 2009 e-mail, as referred to in the e-mail in documentary evidence, and that the Tenant continued to be unreasonable and put a stop payment on his August 2009 rent payment. The Agent referred to his documentary evidence of the 10 Day Notice to End Tenancy for unpaid rent that was posted to the Tenant's door on August 5, 2009.

The Tenant confirmed that he put a stop payment on his post dated rent cheque claiming that he "was not sure how things would play out" with the notice to end tenancy so he decided to put a stop payment on the August rent. The Tenant argued that this is a non-issue as he paid the August 2009 rent in full, within the five days required on the 10 Day Notice to End the Tenancy.

When asked why he felt the need to pay his rent late the Tenant responded by saying that he "simply chose to pay his rent late to see how things would play out".

Analysis

The Tenant has argued that the 1 Month Notice to End Tenancy for Cause issued on July 30, 2009, is invalid because based on the "deemed" received date, the effective date was incorrectly listed as August 31, 2009.

Section 53 of the Act states that if a Landlord gives notice to end a tenancy, the effective date of the notice is "deemed" to be changed in accordance sections of the Act which complies with the required notice period.

Based on the evidence and testimony before me I find the 1 Month Notice to End Tenancy for Cause issued on July 30, 2009 to be valid and of full force and effect. The Landlord and/or his Agent have issued the Tenant the 1 Month Notice to End Tenancy for Cause because the Tenant has failed to comply with a material term and the Tenant has not corrected the situation within a reasonable time, after the Landlord or his Agent have provided the Tenant with written notice to do so.

In reviewing the testimony and documentary evidence in response to the Tenant's Witness' claim and the Tenant's claim that the Landlord failed to provide the Tenant with written notice of the breach of the material terms, I find that the Tenant provided testimony that he has reacted to both the verbal and written e-mail notices provided by

the Landlord, and in doing so the Tenant has confirmed receipt of written notice of his breach, in accordance with section 47 of the Act.

The evidence proves that the Tenant signed the Strata Form K on May 7, 2009 and by doing so acknowledged receipt of the Strata By-Laws on that same day.

Based on the evidence and testimony before me, I find that the Tenant has breached a material term of his tenancy agreement by failing to comply with the Strata By-Law of storing items in the carport. I find that the Tenant was advised of this breach, in writing, on July 7, 2009, and that the Tenant failed to rectify the situation in a reasonable amount of time, and which caused the Landlord to be issued \$400.00 in fines.

Based on the aforementioned I find that the Landlord has proven the requirements for issuing the 1 Month Notice to End Tenancy for Cause and I hereby approve the Landlord's request for an Order of Possession under section 55 (1) of the Act.

As the Tenant has not been successful with his application, I find that he is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: November 24, 2009.

Dispute Resolution Officer