

DECISION

Dispute Codes:

MT and CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to dispute a Notice to End Tenancy.

Both parties were represented at the hearing and were provided with the opportunity to address the Tenants' application for more time to apply to dispute a Notice to End Tenancy, as this matter could be addressed without referring to evidence that was submitted by the Landlord on March 17, 2010.

The Director of Operations stated that the Landlord sent forty-six pages of evidence to the Tenant, via registered mail, on March 17, 2010.

The Advocate for the Tenant stated that the Tenant received this evidence on March 18, 2010; that the Tenant requested assistance from the Law Centre on March 19, 2010; and that the Tenant is requesting an adjournment on the basis that the Tenant and his advocate has not had sufficient time to review the evidence that was submitted.

The Director of Operations opposed the request for an adjournment on the basis that the matter has already been sufficiently delayed and that the declared end date of the Notice to End Tenancy was February 28, 2010.

The parties were advised that the I was reserving judgment on whether I would be granting the Tenants more time to apply to dispute a Notice to End Tenancy; that I would be rendering a written decision on this matter in the event that I declined to grant the Tenants more time to dispute a Notice to End Tenancy; and that I would render an interim decision adjourning the matter in the event that I granted the Tenants more time to apply to dispute a Notice to End Tenancy.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant should be granted more time to apply to set aside a Notice to End Tenancy for Cause.

Background and Evidence

The Tenants submitted a copy of a One Month Notice to End Tenancy for Cause, dated January 11, 2010, that declared the Tenants are required to vacate the rental unit by February 28, 2008. The reasons stated for the Notice to End Tenancy were that the Tenants are repeatedly late paying rent and that they have breached a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so.

The Director of Operations stated that the One Month Notice to End Tenancy was prepared by the Landlord and provided to the Landlord's caretaker on January 08, 2010; that it was dated January 11, 2010 because they did not anticipate that it would be served until January 11, 2010; that it was returned to the Landlord by the caretaker on January 08, 2010 with written documentation that it had been personally served on the female Tenant by the caretaker.

The male Tenant stated that he personally received the One Month Notice to End Tenancy from the caretaker on January 25, 2010.

The caretaker was called as a witness by the Landlord after the contradictory evidence regarding service of the Notice to End Tenancy was presented. The caretaker stated that when serving a Notice to End Tenancy she has the option of either serving it personally to the Tenant or posting it to the door of the rental unit. She stated that she recalls personally serving the Notice to End Tenancy to the female Tenant. She is certain that she did not serve a copy of the Notice to the male Tenant.

The caretaker stated that she could not recall the date that she served the Notice to End Tenancy because she did not expect to be called as a witness in this matter and she does not have her records with her. She stated that she would have sent a copy of her records regarding service to the Landlord immediately after serving the documents.

The Director of Operations stated that she is reading from the document that was forwarded to the Landlord by the caretaker regarding service of the Notice to End Tenancy; that the document declares that the Notice was served on January 08, 2010 at 5:55 p.m.; and that the document was faxed back to the Landlord on January 08, 2010. The caretaker stated that if her report declares that it was served on January 08, 2010 and that it faxed back to the Landlord on that date she is confident that she served it on January 08, 2010.

After hearing the evidence of the caretaker, the male Tenant amended his testimony to state that he actually received the Notice to End Tenancy under his front door on January 25, 2010. The advocate for the Tenant contributes this inconsistency to the fact that English is not the Tenant's first language.

The Director of Operations stated that employees of the Landlord never serve a Notice

to End Tenancy by sliding it under the door. This testimony coincides with an unsolicited statement made by the caretaker during her testimony.

The Agent for the Tenant hypothesized that the Notice to End Tenancy could have been posted on the front door; subsequently fallen off the door; and subsequently slid under the front door of the rental unit. The Director of Operations contends that this is a highly unlikely sequence of events.

The male Tenant was provided with the opportunity to call the female Tenant as a witness, as she is the person who was allegedly personally served with the Notice to End Tenancy. The Advocate for the Tenant advised that the female Tenant was not available.

The male Tenant stated that he went to the office on January 25, 2010 after receiving the Notice to End Tenancy and that he spoke with the Housing and Tenant Relations Coordinator. He stated that they discussed their parking dispute; that he told them that they could tow his vehicle if it was improperly parked; that he believed the dispute had been resolved after their conversation; and that he understood the Notice to End Tenancy would be withdrawn by the Landlord.

The Housing and Tenant Relations Coordinator agreed that the Tenant came to the office and spoke with her after he received the Notice to End Tenancy. She stated that she did not make a note of the date he came to the office but she believes it was long before January 25, 2010. She stated that the Tenant was verbally abusive; that he told her she could tow his vehicle if it was improperly parked; that she advised him that his vehicle would be towed if it was improperly parked; and that she never told him that the Notice to End Tenancy would be rescinded.

The Advocate for the Tenant hypothesized that the Tenant may have believed that they had resolved the dispute due to the fact that English is not his first language.

The Tenant stated that the Tenants realized that the Notice to End Tenancy had not been rescinded on January 27, 2010 or January 28, 2010, after his wife had a conversation regarding the amount of rent that was payable for February of 2010. He stated that he did immediately file an Application for Dispute Resolution at that time because he did not know what to do.

The Director of Operations stated that rent has been paid for February and March of 2010, although there is some rent outstanding from January of 2010.

Analysis

Section 47(4) of the *Act* stipulates that a tenant may dispute a Notice to End Tenancy served pursuant to section 47 of the *Act* by making an application for dispute resolution within ten days after the date the Notice is received.

In the event that the Notice to End Tenancy was personally served to the female Tenant on January 08, 2010, as is alleged by the Landlord, the Tenants would have had to file an Application for Dispute Resolution on, or before, January 18, 2010, to be in compliance with section 47(4) of the *Act*. In the event that the Notice to End Tenancy was received by the Tenants on January 25, 2010, as is alleged by the Tenants, the Tenants would have had to file an Application for Dispute Resolution on, or before, February 04, 2010, to be in compliance with section 47(4) of the *Act*.

As the Tenants did not file their Application for Dispute Resolution until February 05, 2010, I find that the Tenants have not complied with section 47(4) of the *Act* regardless of whether they received the Notice to End Tenancy on January 08, 2010 or January 25, 2010.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice.

After hearing the conflicting evidence regarding the conversation between the male Tenant and the Housing and Tenant Relations Coordinator that occurred sometime after the Tenants received the Notice to End Tenancy, I find that the Tenants submitted insufficient evidence to cause me to conclude that the Agent for the Landlord had stated, or inferred, that the Notice to End Tenancy would be rescinded.

In reaching this conclusion I was strongly influenced by the testimony of the Housing and Tenant Relations Coordinator, whose evidence was forthright and direct, who stated that their conversation regarding the parking dispute and Notice to End Tenancy was acrimonious and that she never told the Tenant that the Notice to End Tenancy would be rescinded. Both parties agree that this conversation involved an agreement to tow the Tenants' vehicle if there were continued problems, which causes me to believe that the dispute had not been resolved to the satisfaction of the Landlord.

In these circumstances I do not find it reasonable for anyone to conclude that the matter had been resolved and that the Notice to End Tenancy had been revoked. I cannot attribute this to a language barrier as it seems apparent that a matter has not been resolved if the parties have agreed to tow a vehicle rather than agreeing on the proper manner of parking that vehicle.

Even if I were to find that the Tenant believed that the Notice to End Tenancy had been rescinded on January 25, 2010, he allegedly became aware that it was still in full force

and effect on January 27, 2010 or January 28, 2010 and he still did not apply to dispute the Notice to End Tenancy for eight or nine days. The Notice to End Tenancy clearly advises tenants of their right to dispute the Notice to End Tenancy and I find that the Tenants had ample opportunity to have someone explain their rights and obligations to them if they were unable to understand the information on the Notice after January 28, 2010.

In the circumstances before me, I do not find that the reasons provided by the Tenants are strong and compelling reasons for being unable to dispute the Notice to End Tenancy within 10 days of receiving the Notice. On this basis, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As the evidence shows that the Tenants did not file an Application to dispute the Notice to End Tenancy within ten days of receiving it, I find that the Tenants accepted that the tenancy was ending on February 28, 2010, pursuant to section 47(5) of the *Act*.

Conclusion

As the Tenants are conclusively presumed to have accepted that this tenancy ended on February 28, 2010, I hereby dismiss the Tenants' application to cancel the Notice to End Tenancy. The Notice to End Tenancy remains in full force and effect.

I find that the tenancy ended on February 28, 2010 and that the Tenants are currently overholding the rental unit.

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 23, 2010.

Dispute Resolution Officer