



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, CNR, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; and to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The matter was original set to be heard on September 10, 2010 at 1:30 p.m. One day prior to that hearing I received a letter from the landlord indicating that he had been in a car accident and would not be able to attend. The hearing was adjourned to this date.

The reconvened hearing was conducted via teleconference and was attended by the tenant and her agent.

The landlord sent an agent to advise that the landlord could not attend as he was in a car accident. When asked if this was a second accident the agent indicated no that the landlord was at a medical appointment related to the original accident.

As the Notice of Adjourned Hearing documents were sent to the parties on September 13, 2010, the landlord had sufficient time to contact the Residential Tenancy Branch with concerns regarding the timing of this hearing but failed to do so. The landlord could also have changed his medical appointment or provided an agent to attend who could deal with the matters related to this hearing but again failed to do so.

As such, I dismissed the landlord's agent's request for another adjournment. The hearing proceeded and the landlord's agent decided to leave the call, as he could not provide any testimony and as I assured him there would be no additional consequence to the landlord, should the agent stay or not.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 1 Month Notice to End Tenancy for Cause; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to have the landlord comply with the *Act*, regulation or tenancy agreement, pursuant to Sections 46, 47, and 66 of the *Act*.

Background and Evidence

The tenancy began sometime in the spring of 2004 as a month to month tenancy for a current monthly rent of \$438.00 due on the 1st of the month.

The tenant indicated at the outset of the hearing that the reason she was unable to submit her application within the required time frames for the notices to end tenancy was that she had been ill and unable to leave her home.

The tenant went on to say that once she was well she thought she was too late to apply for dispute resolution and so did not until she contacted the Residential Tenancy Branch and found she could apply for more time.

I requested the tenant provide documentation from her medical doctor confirming that she was sufficiently ill to incapacitate her to the point that she could not attend the Residential Tenancy Branch to submit an Application for Dispute Resolution, before the end of business on October 21, 2010.

The tenant submitted a note from her doctor. As this document was not submitted with the original evidence from the tenant I attach it to the landlord's copy of this decision.

The tenant provided a note from her physician on October 21, 2010 stating she was incapacitated until July 12, 2010.

The tenant has provided the following documents into evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause dated June 30, 2010 with an effective date of July 30, 2010 citing the tenant is repeatedly late paying rent;
- A copy of a letter dated July 1, 2010 from the landlord to the tenant reminding the tenant that rent is payable and due on the 1st of each month. The letter goes on to say the tenant has been late "several times" since the beginning of 2010 and that failure to pay on time in the future even once will result in the tenant receiving a 30-day "eviction notice";
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 2, 2010 with an effective vacancy date of June 12, 2010 due to \$13.00 in unpaid rent.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 2, 2010 with an effective vacancy date of July 12, 2010 due to \$438.00 in unpaid rent.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 6, 2010 with an effective vacancy date of August 16, 2010 due to \$375.00 in unpaid rent.
- Several copies of print outs from the tenant's income assistance file showing payments made to the landlord since January 2010. With the exception of June, July and August 2010 all rental payments issued and mailed directly to the

landlord were done so prior to the start of each of the months for which they were due.

In the case of June 2010, the tenant's worker has indicated the original cheque was returned and the landlord spoke with the worker providing a new address for the cheques to be mailed.

In the case of July 2010 the landlord again was in contact with the ministry office as he never received the cheque and then signed a form indicating he never received the cheque and a replacement was issued.

For the August 2010 rent the landlord provided the tenant a receipt for the rent on the income assistance file print out dated August 10, 2010.

The tenant notes that the landlord continues to issue notices to end tenancy for unpaid rent despite having rent paid directly from the tenant's income assistance allowances in cheques generated from the Ministry of Housing and Social Development.

Analysis

I accept the tenant was faced with exceptional circumstances at the time the notices were issued that prevented her from making an Application for Dispute Resolution and in accordance with Section 66 of the *Act* extend the time limit for filing her application to the date the application was received.

In the absence of any testimony or evidence from the landlord I find the tenant has been able to establish that at least for the months of January to May there were no late payments of rent despite the landlord's assertion in his later dated July 1, 2010 where he states "Since the beginning of 2010, you have been late with the rent several times".

As the 1 Month Notice to End Tenancy for Cause was issued on June 30, 2010 citing that the tenant has been repeatedly late with rent, I find the landlord has failed to establish this as a fact and therefore has insufficient cause to end the tenancy under Section 47 of the *Act*.

As to the landlord's issuance of 10 Day Notices to End Tenancy for Unpaid Rent for June and July 2010 I find that the rent was late as a result of the landlord failing to inform the tenant and/or her income assistance worker that the address for the payments to be sent had changed and the landlord can therefore not hold the tenant responsible for his inactions.

As to the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 6, 2010 I note the landlord issued a receipt for rent with dated document of August 10, 2010 confirming the tenant had the rent paid within the 5 days required under a Section 46 Notice to End Tenancy rendering the notice as ineffective.

Conclusion

Based on the above findings, I grant the tenant's application and find the 1 Month Notice to End Tenancy for Cause issued on June 30, 2010; the three 10 Day Notices to End Tenancy for Unpaid Rent issued on June 2, 2010; July 2, 2010 and August 6, 2010 to be ineffective. I find the tenancy to be in full force and effect.

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: October 21, 2010.

Dispute Resolution Officer