



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT CNC

Preliminary Issues

The Tenant testified that she was not served the Landlord's evidence until Thursday April 14, 2011 which is only three days prior to today's hearing. The Tenant's Advocate requested an adjournment so that they could have time to review the Landlord's evidence.

The Landlord confirmed service of their evidence to the Tenant was completed on Thursday April 14, 2011 by taping the evidence to the Tenant's door. This is the same date they provided the *Residential Tenancy Branch* with their evidence.

Section 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that the respondent's evidence must be served to the Applicant and the *Residential Tenancy Branch* five clear days prior to the hearing. Considering evidence that has not been served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the *Residential Tenancy Branch* and the applicant Tenant have not received copies of the Landlords' evidence within the required timeframe, I find that the Landlords' evidence cannot be considered in my decision. I will however consider the Landlords' testimony.

The matter before me pertains to the Tenant's application for dispute resolution. Having found above that I cannot consider the Landlord's evidence I find the Advocate's request to adjourn this hearing does not meet the requirements for an adjournment as set out in the *Residential Tenancy Branch Rules of Procedure*; and the request for an adjournment was denied.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for more time to make her application and to obtain an Order to cancel a notice to end tenancy issued for cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 28, 2011. The Landlord confirmed receipt of the hearing documents which was in the same envelope as the Tenant's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant made application to cancel the 1 Month Notice within the required time frames?
2. If not, has the Tenant met the burden of proof to allow more time to make the application to cancel the Notice?
3. Has the Landlord met the burden of proof to end this tenancy with a 1 Month Notice to End Tenancy for Cause, in accordance with section 47 of the *Act*?

Background and Evidence

The Tenant testified that her tenancy began in approximately July 2009 and her current monthly rent is \$529.00. She received the 1 Month Notice to End Tenancy by registered mail which she picked up on March 24, 2011.

The Agent testified the 1 Month Notice to End Tenancy which was dated March 15, 2011 and was served via registered mail on March 15, 2011. The Agent provided the tracking number of the registered mail package. The Landlord submitted that he was of the opinion that the Tenant made her application late and therefore we should not proceed.

The Landlord confirmed the 1 Month Notice to End Tenancy was issued after the Executive Director and Staff was not able to enter the Tenant's rental unit after they had posted notice of entry. A 24 hour notice was posted on the Tenant's door on February 23, 2011 which stated the Landlord would be entering the rental unit on February 25, 2011 for a "pre-move out" inspection between the hours of 9:00 a.m. and 4:00 p.m. When they arrived they knocked and rang the bell and when no one answered they attempted to gain entry with the master key and found that the door had been locked from the inside which prevented their access.

A discussion followed whereby the Landlord and Agent confirmed they had been granted an Order of Possession for this Tenant on February 11, 2011 and have not yet

served the Order upon the Tenant. They indicated there were several other reasons why they wanted to end this tenancy and requested that the Tenant meet with them to discuss the situation.

The Tenant's advocate began to provide testimony pertaining to the issuance of a notice to end tenancy for unpaid rent that was issued in relation to the Landlord's previous application and orders. I explained that I could not hear matters pertaining to the previous decision as we were here only to discuss the Tenant's application today.

Analysis

The 1 Month Notice to End Tenancy was served to the Tenant via registered mail on March 15, 2011. The Tenant is deemed to have received the notice on March 20, 2011, five days after it was mailed, in accordance with the Act. Her application for dispute resolution was filed on March 28, 2011 and was filed within the 10 day timeframe. Therefore the Tenant's request for more time to make her application is moot, as she filed within the required timeframe.

The Landlord's testimony does not constitute sufficient proof to end this tenancy based on the 1 Month Notice to End Tenancy. I questioned the Landlords why they would bother to issue another Notice to end this tenancy when they were in possession of a valid Order of Possession which was granted less than one month before issuing this new Notice. Their response was vague and appeared to be in consideration of the Tenant's current situation. That being said, the onus lies on the Landlords to serve the Order of Possession if they are seeking to end this tenancy and not to continue to issue Notices to end the tenancy.

Conclusion

The 1 Month Notice to End Tenancy issued March 15, 2011, is hereby cancelled, and is of no force or 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: April 18, 2011.

Residential Tenancy Branch