



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC
 MT CNC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for Cause.

The Tenant filed seeking more time to make her application and an Order to cancel the notice to end tenancy for cause.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of the other's application for dispute resolution and evidence, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to end this tenancy for cause?
2. If not, is the Notice cancelled and the tenancy reinstated?

Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement which began on December 1, 2008. Rent is subsidized and is due on the first of each month in the amount of \$510.00. The Tenant paid \$394.00 on November 29, 2008 as the security deposit which was based on the market value rent.

The Landlord testified he posted a 1 Month Notice to the Tenant's door on January 31, 2011 for continually paying her rent late. He confirmed that he has issued several notices to this Tenant for late payment of rent throughout the course of her tenancy. He referred to the tenant ledger that was provided in his evidence as proof that the Tenant continues to pay her rent late. He acknowledged receiving rent payment on February 3,

2011, March 18, 2011, and April 8, 2011. The Tenant has an outstanding balance due of \$170.00 which is the result of a rent increase.

The Tenant responded that she had not received a receipt for her March 2011 or April 2011 rent payments. She stated that she pays her rent with a money order each month and places that money order in the mail slot of the Landlord's office. She is concerned that even though she puts her rent payment in his office on time that he is dating the receipts for when he makes the effort to go to the office and collect the payments. She advised that the Landlord only works at their building two days a week so if he does not work on the first of the month he claims her rent is paid late because he does not pick it up until later.

When asked why she waited so long to file her application for dispute resolution the Tenant stated she has been issued several notices to end her tenancy and every time the Landlord verbally takes back the notices and she is allowed to stay. However this time she received the Notice and on February 9th or 10th she spoke to the Landlord and told him she was having a hard time finding a place. The Landlord told her he was sick and that he would come and talk to her when he was feeling better so she did not have to worry about moving at that time. He also told her that someone had complained and was trying to get him fired. Then on March 28, 2011 the Landlord came into her yard at 8:00 in the evening, when she was not at home, and told her guests that he was going to get the sheriff and move her stuff out. She filed her application for dispute resolution the next day.

The Tenant advised that she had no idea her rent was increased or that she had an unpaid balance of \$170.00 until she received a copy of the tenant ledger put through her mail slot of her door yesterday, April 19, 2011. Now that she knows her rent is higher she will go to income assistance and have them increase her rent and pay off the balance currently owed.

The Landlord confirmed the Tenant had spoken to him in February but he was very sick and does not remember speaking to her. He stated that a notice was posted on the office door with contact phone numbers for the tenants to call during his illness so she should not have called him. He confirmed that he had rescinded all previous notices that were issued in the past because he was helping her out. I asked the Landlord how the Tenant was supposed to know this notice would not be rescinded. He advised that if she wanted this one cancelled she should have come and talked to him personally. When I repeated the Tenant's testimony about speaking to him on the phone he said that he was sick so he does not remember what was said.

The Landlord confirmed that tenants have been putting their rent payments through the mail slot of the office door however the company prefers that people pay their rent by direct deposit. He stated that he feels it is the Tenant's obligation to ensure rent is paid to the Landlord on time therefore if he only works two days a week the Tenant should pay her rent early to make sure it is received by the Landlord on time.

In closing, the Landlord confirmed that over the past couple of years he has continued to work with the Tenant so she would not lose her subsidy but now other things are happening that do not relate to this notice.

The Tenant confirmed she had spoken to the Landlord a few times during the month of February 2011 and requested to stay. She questioned how the Landlord could provide testimony about speaking with her and then say he did not remember what was said. She wanted to confirm that she had no idea her rent had increased. Now that she received the tenant ledger yesterday she would arrange to have the balance paid as soon as possible.

Analysis

Landlord's Application

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances the Landlord was able to accept rent for the period up to February 28, 2011, without waiving the 1 Month Notice to End Tenancy. The Landlord was entitled to collect rent of \$510.00 for the period between February 1st and February 28, 2011.

If the Landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In these circumstances the Landlord has accepted rent for two months after the effective date of the Notice and receipts were not issued to the Tenant for March 2011 and April 2011 indicating the money was received for use and occupancy only. Therefore I find the money was accepted by the Landlord as rent; therefore the Notice to End Tenancy has been waived and the tenancy has been reinstated.

The Landlord has established a process of allowing tenants to deposit their rent payments through the mail slot of the office door. The Landlord has not been considering rent paid until the Landlord attends the office to collect the payments and has time to post them in the tenant ledger.

After careful consideration of the testimony I find the Tenant's rent is deemed to be paid on time providing the payment has been placed through the Landlord's office door mail slot no later than midnight on the first of each month. The Landlord cannot singularly decide rent is late because he chooses not to attend his office for several days into the month. Furthermore a Landlord cannot demand that rent be paid prior to the due date as this would be in contravention of section 26 of the Act which states a tenant must pay rent when it is due in accordance with the tenancy agreement; which in this case is the first of each month.

After careful review of the tenant ledger provided in the Landlord's evidence I note that adjustments were made to the ledger after rent and subsidy amounts were posted for March and April 2011. The adjustments appear to be backdated as reversals were made to the original subsidy amounts and the new amount was entered. Therefore, I accept the Tenant's testimony that she was not previously advised, in writing, that her rent was increased to \$595.00 per month effective March 1, 2011. Changes to the amount of a rental subsidy does not fall under the jurisdiction of the *Residential Tenancy Act* however a Landlord is required to provide a tenant with written notice whenever a subsidy is going to be changed.

Tenant's Application

As per the aforementioned the Notice to End Tenancy was waived. Therefore the Tenant's application is moot and no further action is required.

Conclusion

The 1 Month Notice to End Tenancy issued January 31, 2011, is HEREBY CANCELLED, and is of no force or effect.

I HEREBY DISMISS the Landlord's application, without leave to reapply.

The Tenant's application is now moot; therefore no further action is required and the file is closed.

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 21, 2011.

Residential Tenancy Branch