



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF
 OPC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 and to recover the filing fee for this proceeding. The Landlords applied for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord's agent said he served the Application and Notice of Hearing on the Tenants by registered mail on May 24, 2011. The Landlord's agent also said he served another copy of the application together with his evidence to the Tenants on June 7, 2011 by posting a copy of it to the rental unit door. The Tenants said they received the Landlords' mail but it did not include a copy of the Landlords' application. The Tenants admitted that they obtained a copy of it from the Residential Tenancy Branch. The Tenants also admitted that the Landlord's agent posted an envelope on their door on or about June 7, 2011 but claimed it only contained some newspapers (which the Landlords deny).

The Tenants said they served their Application and Notice of Hearing on the Landlords by registered mail on June 6, 2011. The Landlord's agent said he received this mail but it did not include a copy of the Tenants' application.

I advised the Parties at the beginning of the hearing that the hearing of their respective applications could be adjourned to a future date to give them each an opportunity to re-serve each other with the documents they claimed were not served on each other or in the alternative we could proceed with the hearing of their applications. The Parties agreed to proceed with the hearing of their respective applications.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on January 31, 2011 and expires on January 31, 2012. Rent is \$1,700.00 per month payable in advance on the 1st day of each month. There have been 4 previous hearings between these parties, the last of which occurred on

May 16, 2011. At that hearing, the Tenants received an Order authorizing them to make specific deductions from their rent commencing June 1, 2011.

The Landlord's agent said he served the Tenants with a One Month Notice to End Tenancy for Cause dated March 6, 2011 on March 6, 2011 by posting a copy of it to the rental unit door. The Landlord's agent said he took a picture of the Notice posted to the rental unit door and it was also witnessed by the building manager (who was not available to give evidence at the hearing). The Tenants deny that they received a One Month Notice to End Tenancy for Cause on March 6, 2011 or at all. Instead the Tenants claim that on that day, the Landlord's agent entered their suite without their consent or notice and grabbed one of them because he was angry. The Tenants claim that they called the police and while the police were at the rental unit, the Tenants asked the Landlord's agent to give them a Notice Ending the Tenancy if he wanted to end it but he refused.

The Landlord's agent said he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 on June 2, 2011 by posting it to the rental unit door. The Tenants claim that they found it on their door on June 3, 2011 after returning from work. The Landlord's agent said he gave the Tenants this Notice because he instructed them in an e-mail dated May 31, 2011 to pay for June rent by either depositing the funds to the Landlord's account, by bringing a cheque to him or by sending a cheque by registered mail to him. The Landlord said the Tenants instead sent the cheque by registered mail to his address on June 1, 2011 but it was in the Landlord's name (his sister) who currently resides in China. The Landlord's agent said he was unable to collect this mail because it was in another person's name but admitted that approximately a week ago he was able to collect it.

The Tenants said they met with the Landlord on May 30, 2011 and he advised them to send their rent payment by registered mail. The Tenants said they did so on May 31, 2011 and that it was addressed both to the Landlord and to the Landlord's agent. The Tenants provided a copy of their registered mail receipt as evidence of this. The Tenants said it was not until later that day that they received the Landlord's agent's e-mail.

Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice(s) to End Tenancy) to end the tenancy. This means that if the Landlords' evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord's agent said that on March 6, 2011 he served a copy of a One Month Notice to End Tenancy for Cause on the Tenants by posting a copy of it to the rental unit door. The Landlord said this was witnessed by the building manager but he was not

available to give evidence at the hearing. The Landlord said he also took a photograph of this. The Tenants denied receiving a copy of a One Month Notice to End Tenancy for Cause. Even if the Landlord's agent served the Tenants with this Notice on March 6, 2011 as he claimed, I find that he would still not be entitled to end the tenancy. If a Landlord accepts rent from a Tenant after the effective date of a Notice to End Tenancy, the Landlord is deemed to have reinstated the tenancy. I find that the Landlords have accepted rent from the Tenants for April, May and June 2011 without any qualification (that it is accepted for use and occupancy only). Consequently, I find that the Landlords' application for an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause must be dismissed without leave to reapply.

The Landlord's agent also said that on June 2, 2011 he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 on the rental unit door. The Tenants claim that this Notice was posted on June 3, 2011. The Landlord's agent said the Tenants did not pay their rent to him as they were instructed to do in his e-mail of May 31, 2011 and as a result, he was unable to receive their payment until approximately one week ago. The Tenants said they followed the instructions the Landlord gave them on May 30, 2011 and sent their rent payment on May 31, 2011 by registered mail to both the Landlord and the Landlord's agent as indicated on their registered mail receipt. The Landlord's agent claimed that he has instructed the Tenants since January 2011 that any documents or payments they sent by registered mail should be sent to him only and not in his sister's name because he is unable to collect them.

The Tenants said they made only those deductions from their rent payment for June 2011 that were authorized in the Decision dated May 16, 2011, namely \$25.00 for the loss of the exclusive use of their mail box, \$50.00 for the filing fee, \$22.50 for stop-payment fees for their post-dated cheques for June 2011 which were not returned by the Landlord's agent as ordered, and \$21.17 for making a second set of keys. The Landlord's agent did not dispute this.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2011 must be cancelled as I find that the Tenants made their rent payment within the 5 days granted under s. 46(4) of the Act. I find on a balance of probabilities that the Tenants were served with the 10 Day Notice to End Tenancy on June 3, 2011. Consequently, the Tenants had until June 8, 2011 to pay the outstanding rent. I find that the Tenants sent their rent payment to the Landlord and the Landlord's agent at the Landlord's agent's residence on May 31, 2011 by registered mail. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. The Landlord's agent provided no evidence that he attempted to collect this mail earlier than one week ago or that he was unable to collect registered mail that was also addressed to him. On the contrary, the Landlord's agent's evidence was that he was permitted to do so. Consequently, I find that the Landlords were deemed to have received the Tenants' June rent payment on June 5, 2011.

Although the Tenants were successful on their application to cancel the 10 Day Notice to End Tenancy, I find that this is not an appropriate case to reimburse them the cost of the filing fee. In particular, I find that the Tenants deliberately sent their rent payment to the attention of the Landlord (and the Landlord's agent) although they were previously instructed by the Landlord's agent not to do so. Consequently, I find that the 10 Day Notice likely would not have been issued had the Tenants followed the Landlord's agent's reasonable instructions in the first place.

In order to prevent future problems with rent payments, the Landlord's agent recommended that the Tenants deposit their rent payments to the Landlord's bank account. The Landlord's agent said the Tenants have this information which the Tenants denied. Consequently, ***I order the Landlord's agent to provide the Tenants with his sister's bank account information in writing no later than June 21, 2011. I order the Tenants to make their rent payments by way of depositing them to the Landlord's bank account no later than July 1, 2011 and no later than the 1st day of each month thereafter.***

I also Order that in the future, if the Tenants deliver any documents regarding this tenancy by registered mail, they must send them to the Landlord's agent at his address for service until instructed in writing by the Landlord or the Residential Tenancy Branch to do otherwise.

Conclusion

The Landlords' applications for an Order of Possession and to recover the filing fee for this proceeding are dismissed without leave to reapply. The Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 is granted and the tenancy will continue. The Tenants' application to recover the filing fee for this proceeding is dismissed without leave to reapply.

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: June 15, 2011.

Residential Tenancy Branch