



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent or utilities, compensation for damage or loss, and recovery of the filing fee. The Tenant’s Application requested to cancel a Notice to End Tenancy for unpaid rent or utilities and recovery of the filing fee.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord states that he sent his Application to the Tenant by registered mail on December 20, 2011. The Tenant stated that she was not properly served by the Landlord with their Application, as she does not have a key to the mailbox at this time as she cannot afford to change the locks and that the Landlord expects that it is her responsibility to rekey the mailbox or change any locks.

The Landlord confirmed that he expects tenants to be responsible for any changing of the locks on the mailbox both upon move in and during the tenancy. The Landlord stated that he has never had any keys to the mailbox so he cannot provide the Tenant a spare key to the mailbox. The Landlord’s witness, HC, stated that he works for the strata and is a building manager, he confirmed that the Tenant was expected to change any locks on the mail box and that he also has no keys to the mailbox, so he cannot assist the Tenant in accessing her mail.

The Landlord did not indicate that he has any orders under the Residential Tenancy Act, the “Act”, that allow him to require the Tenant to be responsible for changing any locks related to the rental unit or mailbox. I find that the Landlord is responsible for lock changes and associated costs at the commencement of the tenancy and during the tenancy. A landlord has the right to apply for a claim against a tenant requesting reimbursement of the cost of installing new locks and keys where the landlord can prove

he is owed compensation for damage or loss relating to the installation of a new lock or rekeying a lock.

I will accept the Tenant's position that she did not receive a copy of the Landlord's Application. The Landlord should change the locks on the mailbox as the Tenant states she has no access. If the tenancy continues or is reinstated then the Landlord should provide a mailbox key to the Tenant.

As I am not satisfied that the Tenant had access to her mailbox to retrieve the registered mail sent by the Landlord on December 20, 2011, I find that the Landlord failed to serve their Application in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Landlord's Application is dismissed with leave to reapply.

Issue(s) to be Decided

Has the Tenant filed her Application to dispute the Ten Day Notice within the timeframes allowed by section 46 the Residential Tenancy Act (the "Act")?

If not, has the Tenant established exceptional circumstances, pursuant to section 66(1) of the Act, to have the time period for filing their Application extended?

If so, should the Notice be cancelled?

Background and Evidence

The Landlord confirmed that he received a copy of the Tenant's Application and evidence. The parties confirmed that they have a written tenancy agreement and that rent is \$1050.00 per month due on the first of each month. The Tenant confirmed that she has not vacated the rental unit. The parties agree that the Ten Day Notice to End Tenancy was personally served to the Tenant, however they disagree on the date the document was served.

The Tenant testified that she was busy with work and she has two small children, so she was not able to apply for dispute resolution of the Notice until December 15, 2011. The Tenant stated that the Landlord accompanied by the building manager HC personally served her with the Notice to End Tenancy on Saturday December 10, 2011 and she stated that she filed her Application in five days from the date of service. The Tenant disagrees that the Landlord is owed any rent and feels he has been paid in full and stated that she has receipts for cash she has paid him for rent. The Tenant stated that she is not ready to move out of the rental unit at this time and needs more time as she would like to move out at the end of January 2011.

The Landlord disagrees that the rent has been paid in full and he stated that he has the NSF cheques to prove it. The Landlord stated that he received no cash from the Tenant and issued no receipts, and that any such receipts are forged. The Landlord testified that he personally served the Tenant with the Ten Day Notice to End Tenancy for Unpaid rent on Friday December 09, 2011 at 7:00 P.M. with the building manager present as a witness. The Landlord stated that the personal service on the Tenant was done with the building manager present as he was unsure what the Tenant looked like as he has not been introduced to her in person during the tenancy and she had only been paying rent through sending him cheques. The Landlord stated that during his previous attempts to meet the Tenant in person at the rental unit, he was told by the person answering the door that they were not the Tenant but someone else. The Landlord stated that the Tenant was not served on December 10, 2011, but on December 09, 2011.

The Landlord's witness, HC testified that he is the building manager and that he does not work for the Landlord, but that he works for the Strata and a property management company. The witness HC stated that he was present with the Landlord when the Tenant was personally served with the Ten Day Notice to End Tenancy on Friday December 09, 2011 at 7:00 P.M. The witness HC also stated that the Landlord had told to him prior to service of the Notice that he was not familiar with what the Tenant looked like. The witness HC stated that he works at the building for the strata and has dealt with the Tenant in the past, so he was able to assist the Landlord in identifying the Tenant in person and attending the service of the Notice in person with the parties on December 09, 2011. The witness HC stated that the Tenant was not served on December 10, 2011.

The Landlord requested an order of possession at the hearing and would like it effective as soon as possible.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As both parties disagree on when the Notice was served, I accept the testimony of the independent witness HC. I find that the Tenant was properly served with the Ten Day Notice to End Tenancy for Unpaid Rent on December 09, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. As the Notice was personally served on the Tenant it was deemed to have been served on December 09, 2011 (the same day).

The Notice is a formal legal document and the Tenant did not file an Application to dispute it within the statutory time frames. The Tenant confirmed she has received the Notice and submitted both pages of the Notice with her Application. As per section 46(4) of the Act, the Notice clearly states, on page 1 and on page 2, that the Tenant

must file an Application for Dispute Resolution with the Residential Tenancy Branch within five days. The deadline to do so was December 14, 2011.

Section 66(1) of the Act only allows for more time for the filing of an Application if exceptional circumstances are established. Residential Tenancy Policy Guideline 36 states that the word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. This Policy provides the example of a tenant being in the hospital and unable to contact anyone to represent them at all material times.

The Tenant is not entitled to an extension of the time period for filing an Application for Dispute Resolution, as I find her reasons are not exceptional circumstances. As the Tenant failed to dispute the Ten Day Notice in the five days allowed by the Act she is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenant's Application.

The Tenant had until December 19, 2011 to vacate the premises as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. As the Tenant's Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

I find that the Landlord is entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenant.

Conclusion

The claims as set out on the Landlord's Application are dismissed with liberty to reapply.

I dismiss the Tenant's Application.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

The order accompanies the Landlord's copy of this decision.

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: January 06, 2012.

Residential Tenancy Branch