



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to make such an application. The landlord had applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, as well as authority to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matters

The tenant was one day late in filing his application to cancel the Notice to End Tenancy. The landlord was of the position that the tenant's failure to dispute the Notice within five days of receiving the Notice is basis to find the tenant conclusively presumed to have accepted the Notice to End Tenancy under section 46(5) of the Act and submitted the tenant's application should be dismissed and the landlord's application for an Order of Possession granted.

The Act permits a Dispute Resolution Officer, as delegated by the Director, to extend a time limit in extraordinary circumstances. In filing his application, the tenant applied for more time to make his application.

The tenant submitted that his rent is paid directly to the landlord by the Ministry of Social Development ("the Ministry") so after he receive a Notice to End Tenancy for Unpaid Rent in the evening of February 2, 2012 he spent the following four business days trying to determine where the rent cheque went and how to get a replacement issued to the landlord. The tenant's efforts included obtaining a legal document from the Ministry and then trying to get the document signed for the Ministry. The tenant requested the landlord's various staff members sign the document and when they refused the tenant went to the landlord's office twice to get his signature but the landlord was not in his office. Despite the tenant's several trips to the Ministry and the landlord's office during the days following receipt of the Notice he was unsuccessful in meeting with the

landlord and on the sixth day after receiving the Notice the tenant came to the Residential Tenancy Branch to file his application to dispute the Notice.

The landlord testified that his staff persons are instructed not to sign Ministry forms on behalf of the landlord. The landlord's agent BL submitted he is the only person authorized to sign Ministry documents on behalf of the landlord.

I am satisfied the tenant made considerable efforts to try to facilitate the replacement of the rent cheque immediately following the receipt of the Notice. I find the tenant was restricted by the office hours of the Ministry and the landlord, the weekend, and the landlord's practice to limit the number of authorized persons who can sign the required documentation. In consideration of the above, and in consideration that the tenant was only one date late in filing his application, and in consideration that this is a long-term tenancy (approximately 5 years) I found these to be exceptional circumstances and I granted the tenant's request for a one day extension to file this application.

Having granted the tenant's request for more time, I proceeded to consider both applications.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary and appropriate to issue orders to the parties?
3. Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

The tenant submitted that his tenancy commenced 5 ½ years ago. The landlord submitted the tenancy commenced August 31, 2007. Both parties agreed that the tenant's current monthly rent is \$475.00 and it is payable on the 1st day of every month.

On February 2, 2012 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice); however, the parties were in dispute as to who served the Notice and what time of day it was served upon the tenant. The Notice indicates the tenant failed to pay rent of \$475.00 on February 1, 2012 and has a stated effective date of February 12, 2012.

The tenant submitted that his rent is always paid on time as it is paid directly by the Ministry. The tenant submitted that in attending the Ministry office he determined that

the rent cheque for February 2012 was sent to the landlord and that the Ministry records show that the rent cheque is still not cashed by the landlord. The tenant suggested that the landlord wants to end this tenancy for a variety of reasons -- including obtaining more rent for the unit; his objections to the landlord's attempt to impose an illegal rent increase; and, the landlord does not like the tenant -- so the landlord has not cashed the rent cheque in an effort to end the tenancy for unpaid rent. The tenant submitted; however, that the tenant has made considerable efforts to go between the Ministry and the landlord in an effort to get another cheque to the landlord but it is the landlord that is thwarting his attempts to get a replacement cheque.

The landlord responded by stating that the landlord is in the business of renting units and would not hold on to a rent cheque to end a tenancy as suggested by the tenant. The landlord BL testified that sometimes a tenant will present paperwork to the landlord for signature for a replacement cheque but other times no paperwork is required for a replacement cheque.

The landlord submitted that BL is the only person authorized to sign Ministry paperwork for a replacement cheque. The landlord submitted that there are reasons, such as "kiting" of cheques, that have resulted in the landlord restricting those that can sign paperwork from the Ministry for tenants. The tenant claimed he has witnessed other landlord employees signing Ministry paperwork for replacement cheques.

The landlord submitted that the tenant did not present BL with a form to sign for a replacement cheque and if the tenant did attend the BL's office he should have made more attempts to attend BL's office during the times he is in his office.

Finally, the landlord suggested that it is unknown as to whether the Ministry even sent the landlord a cheque for the month of February 2012 in the absence of a transmittal document from the Ministry.

The tenant requested that I call the Ministry as a witness to confirm: that a cheque was sent to the landlord for February 2012; that the tenant has been to the Ministry office several times to try to get a replacement cheque and that the Ministry has even called the landlord's agents in attempts to get a replacement cheque to the landlord; and, that one of the landlord's agents has acknowledged receiving the cheque and not cashing it.

I called the phone number provided by the tenant and was eventually connected to an employee with the Ministry. The call to the Ministry was connected to the teleconference call so that all of the parties could hear the conversation with the Ministry employee and ask questions as necessary.

The Ministry employee advised that the computer system for the Ministry was down and specific information could not be retrieved at the time of the hearing. I proceeded to enquire as to the procedure for replacing a rent cheque that has been sent directly to a landlord and has not been cashed. The employee advised that issuance of a cheque for shelter is considered shelter paid and another shelter payment will not be made by the Ministry except where a landlord signs a legal document affirming the cheque was not received or cashed and will not be cashed if received by the landlord at a later time. The Ministry employee confirmed that without the proper legal documentation signed by the landlord a replacement shelter payment would not be issued. The parties did not have any questions for this witness.

Documentary evidence provided for this proceeding consisted of: the 10 Day Notice; and, a signed Proof of Service of the 10 Day Notice.

The landlord's agent BL and the tenant confirmed during the hearing that they are available to meet each other at or about 3:00 p.m. today at the landlord's office, as listed on the 10 Day Notice. I proceeded to give an oral decision to the parties that I shall describe in the Analysis.

Analysis

The burden of proof in dispute resolution proceedings is based upon the balance of probabilities. This standard of proof means the facts at issue *probably* occurred as alleged.

Upon consideration of the evidence before me, which consisted largely of disputed verbal testimony, I find it more likely than not that the events occurred as alleged by the tenant. Although somewhat disruptive at the hearing, I found the tenant's statements straightforward, detailed, and consistent with the independent information given by the Ministry employee during the hearing.

In contrast, I found the statements of the two agents that appeared for the landlord to be inconsistent with other evidence before me. For example:

1. The tenant submitted he was served with the 10 Day Notice by an employee named Dominic. The landlord's agent BL testified he served the Notice and that Dominic was present. However, when I look at the signed Proof of Service, the document does not reflect Dominic as a witness to service. Rather, the other

agent at the hearing (GM) signed the document as having witnessed service yet I did not hear from either party that GM was present for service of the Notice.

2. When I enquired about the requirement to sign paperwork for the Ministry for replacement cheques BL stated sometimes paperwork is required for replacement cheques and other times it is not. This statement is contrary to the statement made by the Ministry employee that paperwork is always required for a replacement cheque.

In light of the above, I find, based on the balance of probabilities that the Ministry did mail a rent cheque to the landlord for the month of February 2012 at the end of January 2012 and I am satisfied the cheque was not been cashed. I make no finding as to whether the landlord received the cheque or the reason it was not cashed.

As with any item that is mailed, there is a possibility the item is lost during transit or otherwise misplaced. In such an event, I find it reasonable that the landlord notify the tenant of such an occurrence and the tenant make reasonable efforts to provide a replacement cheque within a timely manner. In this case, I am satisfied the tenant made such reasonable efforts and the landlord's actions or practices have hindered those efforts.

As I am satisfied the cheque issued for February 2012 is still outstanding and the landlord is entitled to receive rent for the month of February 2012 **I make the following ORDERS upon both parties**, pursuant to the authority afforded me under section 62 of the Act:

1. **The 10 Day Notice issued February 2, 2012 is cancelled and the tenancy continues.**
2. **The landlord and tenant shall meet with each other at or about 3:00 p.m. today during which time:**
 - a. **the tenant shall present the landlord BL with the necessary Ministry document to obtain a replacement rent cheque; and,**
 - b. **The landlord BL will sign the Ministry document and immediately return it to the tenant.**
3. **The tenant will submit the signed Ministry document to the Ministry immediately thereafter, taking into account business hours of the Ministry, and request a replacement shelter cheque.**
4. **The tenant will ensure the landlord is supplied with a replacement rent cheque by February 29, 2012.**

As I have cancelled the Notice issued February 2, 2012 I do not provide an Order of Possession or Monetary Order to the landlord with this decision. However, should the tenant fail to comply with the tenant's obligations as outlined in the Orders above the landlord is at liberty to issue another 10 Day Notice for the February 2012 rent or a 1 Month Notice to End Tenancy for Cause for failure to comply with Orders of the Director.

Should the landlord fail to comply with the landlord's obligations as outlined in the Orders above the tenant is at liberty to make another Application for Dispute Resolution and seek further remedy.

Conclusion

These disputes were resolved by way of ORDERS issued to both parties. The 10 Day Notice issued February 2, 2012 has been cancelled. Accordingly, an Order of Possession and Monetary Order do not accompany 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: February 23, 2012.

Residential Tenancy Branch