



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel the 10 Day Notices to End Tenancy for unpaid rent; and to recover the filing fee from the Respondent for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

At the outset of the hearing the agent acting for the landlord (KC) challenged my authority to make decisions concerning the tenants' right to file their application on the seventh day after receiving a 10 Day Notice to End Tenancy, as the fifth day fell on a weekend and the Residential Tenancy Branch is closed at the weekend. I direct the landlords agent to the *Interpretation Act* s. 25(3) which provides for the calculation of time and states: If the time for doing an act in a business office falls or expires on a day when an office is not open during regular business hours, the time is extended to the next day that the office is open.

Consequently the tenants filed their application to cancel the Notice to End Tenancy on the next day following a weekend when the Residential Tenancy Branch was closed and therefore the tenants are deemed to have filed their application within the allowable five days under the *Act* with the extension of time allowed.

The landlord's agent also challenged my authority as to the recording of the hearing. The landlords agent became aggressive when he announced he was going to record the hearing and was told that recording of a hearing is not permitted under the Rules of Procedure. I refer the landlord's agent to s. 9.1 of the Rules of Procedure which states: **Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted.** I have no way of knowing if the landlords agent continued to record the hearing after being informed that it was not permitted.

The landlord's agent challenged my authority concerning my decision permitting additional evidence to be submitted after the hearing had concluded. I refer the landlords agent to s.11.5 of the rules of procedure which deals in part with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding. At the dispute resolution proceeding, a party may request that the Dispute Resolution Officer accept any evidence that was not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding as required by the Rules of Procedure and must satisfy the Dispute Resolution Officer that the evidence is relevant.

In this case the tenants and the tenants witness asked to provide additional evidence after the hearing had concluded. This evidence was deemed to be relevant in assisting the Dispute Resolution Officer in making a final decision. The landlord's agent also then requested the opportunity to provide additional evidence. Both parties request was granted and the parties were instructed to also send any additional evidence to the other party.

Issue(s) to be Decided

Are the tenants entitled to have the 10 Day Notices to End Tenancy cancelled?

Background and Evidence

The tenants testify that their tenancy started on December 01, 2011 for a fixed term that is due to end on November 30, 2014. Rent for this property is \$1,000.00 per month and is due on the first day of each month in advance.

The agent for the landlord (KC) did not agree or disagree with these tenancy details as the landlord's agent testifies he has not seen the tenancy agreement.

KC testifies that he served the tenants with five 10 Day Notices for unpaid rent all on July 16, 2012. These notices are for March, April, May, June and July, 2012 and were served to the tenants in person. The notices all state that the tenants owe rent for that particular month of \$1,000.00 and the effective date of the Notices are July 26, 2012.

KC testifies that the tenants have not been paying rent to his client (KC refused to divulge his clients name) and as the previous landlord lost his share of the property in February, 2012 the tenants should have started to pay their rent to his client who has assumed this tenancy after a Court Order was issued on January 31, 2012. KC testifies that he had informed the tenants in February, 2012 that they must start paying rent to the property management company. KC testifies that the court ruling made on January 31, 2012 debarred and foreclosed of all estate, right, title, interest and equity of redemption of the property from the former owner and landlord to his client the new owner and landlord.

KC testifies that his office did receive rent from the tenants for August, 2012 but this cheque has not yet been deposited and the property management company is holding

the cheque till this matter is resolved. KC testifies that the tenants appear to have moved from the property.

The tenant's testify that they are still in possession of the property but have temporally moved out because of the harassment and stress resulting in dealing with this matter. The tenants state it is their intention to continue to live at the rental unit.

The tenant's testify that they have paid their rent each month and have receipts from their landlord to show this. These receipts have been provided in evidence. The tenants testify that they have never been informed that the landlord, on their tenancy agreement, DH was no longer their landlord and they have never been given another landlords name or address until they received the 10 Day Notice. The tenants testify that this landlord's agent has not provided them with any authorisation from a new landlord to collect rent and they only paid August rent to this property management company because their landlord asked them to do so.

The tenants call their witness DH who is the landlord documented on the tenancy agreement. DH testifies that he was one of three partners in this property DH, RS and PH. In 2009 there was a drug bust on the property due to a 'grow up'. The property was deemed unliveable by the city until repairs were made as required by law. In 2011 one of the other partners son SS sent DH an e-mail asking DH to deal with the rental of the property on his own. This person SS was not a registered owner of the property. DH testifies that he rented the property to these tenants as they agreed to undertake to do the demolition and renovations. A fixed term lease was agreed upon and entered into which does not expire until November, 2014. Shortly after this DH testifies there was a dispute between DH and one of the other partners. A court hearing took place and DH was unsuccessful at that hearing and lost his rights to the property according to the Court Order dated January 31, 2012. DH testifies that he appealed that Court Order and won a stay of proceedings on February 29, 2012. Due to the stay of proceedings DH testifies that he remains an owner of the property and the tenants' landlord. DH confirms that rent was paid by the tenants in lieu of work completed on the property as specified in the tenancy agreement.

DH testifies that he has never entered into an agreement with this property management company or this agent KC to manage the property or collect rent on his behalf. DH testifies that within the last 30 days there has been another court hearing and DH lost his rights to the property again. DH states he has 30 days to lodge another appeal but is unsure if he will do so. Because of this he did then ask the tenants to pay the rent for August to the Property Management Company.

DH testifies that as of August 13, 2012 the title search for the property shows all three partners as having an undivided one third interest of the property. DH testifies that he has never meet KC and has never been provided with any documentation from KC as to KC's authority to act as an agent for the landlord or any documentation showing who KC works for. DH testifies that he spoke to the managing broker of the real estate company and was told by the management broker that they the management company have no authority in this matter. DH testifies that the tenants have paid their rent as per DH's direction.

KC testifies that he has a management agreement with one of the other partners SS. DH states that SS has never been an owner or partner it was RS that was the other partner and SS has no right to authorise anyone to act on his behalf. SS was a mortgage holder on the property and had no right to the lands. DH testifies that he owed money to SS on this private mortgage which was secured by the property.

KC cross examines the witness DH and asks the witness how could SS be involved in a Supreme Court case. DH replies that he was a mortgage holder only. KC asks if the stay was denied, DH replies, No the appeal was not denied; DH just lost the case in court not the right to appeal. KC asks if SS hired KC and the property management company to serve notices he is able to do that. DH replies he is just asking KC what his authority is to act on behalf of SS.

KC requests that the 10 Day Notices to End Tenancy are upheld and they seek an Order of Possession for August 31, 2012. KC acknowledges that the tenants have been placed in an unfortunate position.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. Having considered the tenancy agreement I find the tenants did enter into a lawful agreement with the landlord to rent this property for \$1,000.00 each month. I further find the tenants have continued to pay their rent for this property for each of the months relating to the five 10 Day Notices. The question in this matter relates to whether or not the tenants were notified in writing that the property had been passed over to a new owner/landlord; and were the tenants notified that the new owner/landlord had authorized the property management company and the landlord's agent KC to act on the landlord's behalf.

The tenants argue that they have not been notified and have been given no written authorization that the property had passed over to a third party or Property Management Company. The landlord's agent KC argues that he did notify the tenants in February 2012. However KC has provided no documentation to support this claim and has therefore not met the burden of proof regarding notification to the tenants. Simply serving the tenants with Notices to End Tenancy in the property management company's and the agents name is not sufficient authorization.

I have also considered the question which has arisen as to who the legal owner/landlord of the property is. On January 31, 2012 a Supreme Court decision ruled that the owner/landlord DH and the other partner PH are absolutely debarred and foreclosed of and from all the estate, right, title, interest and equity of redemption of, in, and to the lands and premises. However, this Order was stayed on February 29, 2012 after DH filed an appeal. Consequently, when an Order made by the Courts is stayed the owner remains under title for the property until the appeal is heard and the matter decided. Therefore, the landlord DH was entitled to continue to collect rent from the tenants at that time.

The tenants are the innocent parties in this action as they have paid their rent to their landlord as identified under the tenancy agreement and could not pay rent to another

party unless they had permission from their landlord to do so (which DH gave the tenants in August, 2012) or until the tenants receive formal written authorization to do so from any resulting Supreme Court action. Therefore it is my decision that the tenants have paid their rent and therefore all five of the 10 Day Notices are cancelled and the tenancy will continue.

At this point, moving forward, if the tenants choose to continue to reside in the rental property, the tenants must be provided with written documentation and authorization concerning who the legal landlord is for the property and to whom they should pay their rent.

Conclusion

The tenants' application is allowed. The 10 Day Notices to End Tenancy for unpaid rent are all cancelled and the tenancy will continue.

As the tenants have been successful in setting aside the Notices, the tenants are entitled to recover their \$50.00 filing fee for this proceeding. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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: August 20, 2012.

Residential Tenancy Branch