



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to be allowed more time to make his application to cancel a Notice to End Tenancy, to obtain an Order to cancel a Notice to End Tenancy for unpaid rent, and to have the Landlord Ordered to comply with the Act.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted more time to make his application?
2. Should the 10 Day Notice to end tenancy issued July 31, 2012 be cancelled?
3. Should the Landlord be Ordered to comply with the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that the month to month tenancy began on August 1, 2010. Rent is payable on the first of each month and the current subsidised amount payable is \$375.00. The Tenant paid \$430.00 on August 1, 2010 as the security deposit which was based on market value rent.

The Tenant confirmed he received the 10 Day Notice on July 31, 2012. He submitted that he did not make his application to cancel the notice prior to August 14, 2012

because after he had approached the Landlord to discuss the Notice the Landlord told him he was going away and that he would check into things when he returned. When the Landlord returned he told him that he had to pay more money so he decided to dispute the Notice.

The Tenant argued that he had always paid cash for his rent and that the previous building manager would not issue him receipts. He stated that he has always paid his rent and he does not have an outstanding balance due.

The Landlord confirmed that the Tenant approached him just prior to his going away on the long weekend and he had told the Tenant he would check into things when he returned. He acknowledged that they did not submit evidence to support their allegation that the Tenant owes \$657.00 in rental arrears. He advised that he has been the building manager since April 2012 and that he was told this Tenant had accumulated arrears from before he was hired so he issued the demand letter and then issued the 10 Day Notice to the Tenant. He said he had contacted the previous manager who confirmed there were arrears and noted that there were no receipts that he could rely upon as evidence.

In closing the Tenant advised that all of his rent was paid up in full. He noted that his rent is now paid directly to the Landlord by Income Assistance and there has never been an issue about unpaid rent before.

The Landlord confirmed that since he has been employed the Tenant's rent has been paid by direct deposit from Income Assistance.

Analysis

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance.

In this case I find the reasons given by the Tenant, and corroborated by the Landlord, on why he did not apply within the prescribed timeframes constitutes exceptional circumstances. Accordingly I accepted this application to cancel the 10 Day Notice and proceeded with the hearing.

When a tenant is issued a 10 Day Notice to end tenancy they have the option of paying the outstanding amount of rent being requested or they can apply for dispute resolution to dispute the claim.

The burden of proof to support the amounts being claimed on a 10 Day Notice first lies with the Landlord to validate the Notice. In this case the Landlord relied solely on his oral testimony indicating \$657.00 was outstanding from a time prior to his employment, which the Tenant disputes. The Landlord affirmed that there were no receipts to rely upon to prove the amount being claimed. Therefore, in the absence of any documentary evidence to prove the Tenant owes outstanding rent that was accumulated prior to April 2012 I find there to be insufficient evidence to validate the 10 Day Notice. Accordingly, I find the Notice to be invalid and the Tenant has no outstanding rent prior to July 31, 2012.

There was no evidence before me to warrant issuing an Order to have the Landlord comply with the Act. Accordingly I dismiss this request.

Conclusion

I HEREBY uphold the Tenant's request and the 10 Day Notice is HEREBY CANCELLED and is of no force or effect, pursuant to section 62 of the *Act*.

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: September 14, 2012.

Residential Tenancy Branch