



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA GROUP OF SOCIETIES RNH
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 29, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy issued under section 47 of the *Residential Tenancy Act*, (the *Act*), be cancelled, as requested by the tenant?

Background and Evidence: One Month Notice

The tenancy began in September 2008. Rent is \$854.00. No security deposit was paid.

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated May 29, 2013, showing an effective date of June 30, 2013. The One-Month Notice to End Tenancy for Cause indicated that the tenant had been repeatedly late in paying the rent.

The landlord testified that the One Month Notice was issued as the tenant had been repeatedly late paying rent throughout the tenancy and the landlord submitted a copy of the tenant's account ledger confirming numerous late payments.

The landlord testified that the One Month Notice to End Tenancy for Cause was posted on the tenant's door on May 29, 2013 and that the effective date shown for the end of the tenancy is June 30, 2013.

The tenant acknowledged that rent was not paid on time each month, but stated that this was because he believed that the rent payments had to be delivered directly to the landlord in another city. The tenant stated that, they would ensure that their monthly payments of rent would be sent in on time in the future.

Analysis:

The burden of proof is on the landlord to establish that the notice was justified.

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. I accept the evidence proving that there have been repeated late payments of rent during this tenancy.

Section 47(1) permits the landlord to end a tenancy for repeated late payment of rent and therefore, the Notice is warranted under the Act. For this reason, I find that the tenant's application seeking to cancel the Notice must be dismissed.

When a tenant's application to cancel a Notice to End tenancy has been dismissed and the landlord makes a request for an Order of Possession, section 55(1)(a) requires that the arbitrator must issue an order of possession when upholding the Notice to End Tenancy. Accordingly, I find that the landlord is entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause.

However, in regard to the effective date for the termination of the tenancy, section 47(2) of the Act requires that a Notice for Cause must end the tenancy effective on a date that is:

- (a) **not earlier than one month after the date the notice is received**, and
- (b) **the day before the day in the month**, or in the other period on which the tenancy is based, **that rent is payable** under the tenancy agreement.

(My emphasis).

I accept that this Notice was posted on the tenant's door on May 29, 2013. I find that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) **if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached**;

(d) if given or served by leaving a copy of the document in a mail box or mail slot,
on the 3rd day after it is left. (my emphasis)

Under section 90(c) of the Act a Notice posted on the door on May 29, 2013, would be deemed as served in 3 days, which would be June 1, 2013. Therefore, I find that the effective date for the end of the tenancy, that being June 30, 2013, is not compliant with the Act in accordance with section 47(a) and (b).

Section 53(1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed in accordance the Act.

Accordingly, I find that a Notice served on June 1, 2013, purporting to be effective on June 30, 2013, must be changed to have an effective date of July 31, 2013, in order to comply with the Act.

Based on the evidence, I hereby dismiss the tenant's application seeking to have the One-Month Notice to End Tenancy for Cause cancelled and I hereby grant the landlord an Order of Possession effective July 31, 2013. This Order is final and binding and must be served on the Applicant tenant. It may be enforced by an application to the Supreme Court if necessary.

Conclusion

As the tenant is not successful in the application, the tenant's request for an order to cancel the One-Month Notice to End Tenancy for Cause is dismissed and the landlord is granted an Order of Possession.

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: July 08, 2013

Residential Tenancy Branch

