



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC LRE

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for unpaid rent, as well as for monetary compensation and an order suspending or setting conditions on the landlord's right to enter the rental unit. The tenant, the landlord and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing I informed the parties that the issue of the notice to end tenancy took precedence, and I only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

The landlord did not submit any documentary evidence. The landlord stated that he received the tenant's application and notice of the hearing, but he did not receive the tenant's evidence package. The tenant stated that he posted the evidence to the door of the landlord's office because the landlord has repeatedly avoided service by not picking up his mail. The tenant did not have a witness or other evidence to establish that he served his evidence package on the landlord, and I therefore did not admit or consider the tenant's documentary or electronic evidence. The landlord and the tenant gave testimony in the hearing. I have reviewed all testimony, as well as previous decisions between the parties. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issues

Jurisdiction

The landlord raised the issue of whether the tenant was in fact a tenant or an occupant. In a decision dated February 19, 2013, the arbitrator found that the tenant was a tenant and had been a tenant since March 2012. As this issue has already been determined, I

find that it is *res judicata* and not open to me to alter that finding. The tenant is not an occupant, but rather a tenant of the landlord.

The Rental Unit

The landlord raised the issue of whether the tenant occupies rental unit A or B, or both. On his application the tenant indicated that the rental unit in question is unit B. In a decision dated May 13, 2013, the arbitrator found that the tenant occupies unit B only. As this issue has already been determined, I find that it is *res judicata* and not open to me to alter that finding. The tenant is only a tenant of unit B.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began, as noted above, in March 2012. The landlord and the tenant have been involved in several dispute resolution hearings regarding this tenancy.

The first hearing, on January 21, 2013, dealt with the tenant's application for monetary compensation and repair orders. In the decision dated February 19, 2013 the arbitrator ordered the landlord to carry out several repairs and emergency repairs. The arbitrator ordered that if the landlord did not complete the repairs as ordered, beginning April 1, 2013 the tenant's rent of \$850 would be reduced by \$400 to \$450 per month, until the landlord applied for a declaration that the orders were completed. The arbitrator also ordered the landlord to provide receipts for rent paid in cash. The landlord applied for a review hearing but his application was dismissed.

The second hearing, on May 10, 2013, was convened pursuant to applications by a former tenant and the landlord. The tenant appeared as a witness in that hearing. In the decision dated May 13, 2013, the arbitrator cancelled a notice to end tenancy for unpaid rent that was issued against the former tenant of the rental unit. The arbitrator also found, as noted above, that the tenant was in fact a tenant, and had been since March 2012.

The third hearing, on May 30, 2013, dealt with the tenant's application to cancel a notice to end tenancy for unpaid rent and for monetary compensation. The notice to end tenancy indicated that the tenant owed \$1575 in unpaid rent as of May 1, 2013. The tenant attended the hearing but the landlord did not. In the decision dated May 31,

2013, the arbitrator cancelled the notice to end tenancy and found that the landlord had not carried out any of the ordered repairs or emergency repairs. The arbitrator ordered that commencing June 1, 2013, the rent for the unit would be reduced to nil (\$0) until the landlord successfully applied for a declaration that all ordered repairs were completed. The arbitrator also cautioned the landlord with respect to section 94.1 of the Act, which allows the director to order a person to pay a monetary penalty if that person has contravened the Act or failed to comply with a decision or order.

The fourth hearing, on June 18, 2013, dealt with an application by the tenant to cancel a further notice to end tenancy for unpaid rent. That hearing resulted in a settlement agreement between the parties, whereby the landlord and the tenant agreed that the landlord would provide 24 hours' notice in writing to enter the rental unit. The arbitrator indicated that this agreement comprised a full and final settlement of all aspects of the dispute arising from this application.

On July 2, 2013, the landlord served the tenant with yet another notice to end tenancy for unpaid rent. The notice indicated that the tenant owed \$1575 in unpaid rent "and further arrears" due on July 1, 2013. The tenant applied to cancel the notice, and the hearing convened before me on August 9, 2013. As noted above, the landlord did not submit any documentary evidence such as ledgers for this hearing. I asked the landlord to clarify the amount of unpaid rent indicated on the notice, but he only stated that the tenant had not paid rent for July 2013 and there were further arrears, as noted on the notice.

In the hearing, the landlord stated that he had successfully applied for a review of the May 31, 2013 decision which had reduced the rent to nil. I asked the landlord when he made his application for review, but he was evasive and did not answer. The tenant stated and I verified that the landlord applied for review on July 15, 2013.

In the review consideration decision, dated July 24, 2013, the arbitrator noted that the landlord indicated he did not receive the decision of May 31, 2013 until July 15, 2013. The landlord indicated that he did not attend the May 30, 2013 hearing because he was not served with notice and was unaware of the hearing. The landlord also indicated in his application that he reported to the police that his mail may have been tampered with. The reviewing arbitrator accepted the landlord's evidence, suspended the decision of May 31, 2013 and granted a review hearing, which is scheduled for August 26, 2013.

Analysis

I find that the notice to end tenancy for unpaid rent dated July 2, 2013 is not valid.

The landlord did not apply for a declaration that he had completed all ordered repairs, and therefore the monthly rent was reduced to \$450 beginning April 1, 2013. The May 31, 2013 decision further reduced the rent to nil, beginning June 1, 2013. The July 2, 2013 notice to end tenancy alleges unpaid rent of \$1575 owing July 1, 2013. I note that this is the same amount of unpaid rent that the landlord claimed was owed in May 2013. As the May 31, 2013 decision reducing the rent to nil was suspended on July 24, 2013, the tenant's current monthly rent is \$450. The landlord provided no evidence to support the alleged amount of \$1575 owing July 1, 2013. For all of the above reasons, I therefore cancel the notice to end tenancy for unpaid rent.

Conclusion

The notice to end tenancy for unpaid rent dated July 2, 2013 is cancelled, with the effect that the tenancy continues in accordance with the Act.

As a review hearing is scheduled for August 26, 2013, I find that it is appropriate to dismiss the remainder of the tenant's application with leave to reapply.

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 12, 2013

Residential Tenancy Branch