



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baker Creek Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, MT FF

Introduction

This hearing dealt with an application by the tenant. The tenant indicated on his Tenant's Application for Dispute Resolution that he was seeking more time to make an application to cancel a Notice to End Tenancy and that he was also seeking to dispute an additional rent increase.

At the hearing it became apparent that the real issues in dispute were the amount of rent that is payable pursuant to the tenancy agreement and two notices to end tenancy that were issued by the landlord. I will allow the tenant to amend his application to seek cancellation of a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause.

Both the tenant and landlord attended the hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel a notice to end tenancy?

Is the landlord seeking to increase rent beyond the allowable amount and, if so, should the landlord be permitted to do so?

Should the Notice to End Tenancy for Unpaid Rent be cancelled?

Should the Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The landlord gave evidence that he served a Notice to End Tenancy for Unpaid Rent (the "Unpaid Rent Notice") and a Notice to End Tenancy for Cause (the "Cause Notice") by personal service on the tenant on December 5, 2013. The Unpaid Rent Notice indicates that the tenant failed to pay \$250.00 in rent that was due December 1, 2013.

The second page of the Cause Notice was not in evidence, but the landlord said the causes for ending tenancy were that the tenant was repeatedly late paying rent and the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The tenant agrees he received the Unpaid Rent Notice and the Cause Notice, but says he believes he received them on December 6, 2013. According to Section 46(4) of the Act, the tenant must make application for dispute resolution within five days after receiving a Notice to End Tenancy for Unpaid Rent. The Residential Tenancy Branch received the tenant's application by fax on December 12, 2013, which is seven days after December 5, 2013 (the date the landlord says service took place) and six days after December 6, 2013 (the date the tenant says service took place).

According to Section 47(4) of the Act, the tenant must make application for dispute resolution within ten days after receiving a Notice to End Tenancy for Cause. The Residential Tenancy Branch received the tenant's application by fax on December 12, 2013.

The landlord gave evidence that he took over the job as agent of the landlord in August 2013 and asked the tenant at that time how much the tenant's rent was. He said the tenant told him his rent was \$450.00. However, the landlord said he became aware in November 2013 that the tenant's rent was actually \$500.00. The landlord said that he has a signed tenancy agreement indicating that the tenant is obligated to pay \$500.00 each month in rent. The landlord did not put a tenancy agreement into evidence prior to the hearing.

The landlord said he spoke to the tenant twice in November 2013 but the tenant was adamant that his rent was \$450.00. The tenant paid \$450.00 again for December 2013 rent, and the landlord accordingly issued the Unpaid Rent Notice.

The tenant states that he did not sign any tenancy agreement and his rent is \$450.00 per month. The tenant provided a copy of a receipt for \$450.00 that reads "Oct 15 – 31 Rent 225.00, Damage Deposit 225.00". The landlord said the form of receipt provided by the tenant is not one the landlord uses.

The landlord said the Cause Notice was based in part on repeated late rent, in that the tenant had in each of the months of August, September, October, November, and December 2013 paid \$450.00 instead of \$500.00.

The landlord said the Cause Notice was also based on unreasonable disturbance of another tenant. The landlord said he was told the tenant accompanied another tenant, who has dementia, to a bank machine where the second tenant withdrew \$1,500.00 in cash. The landlord said there is an allegation of theft against the tenant. He said no charge has been laid but the police are investigating.

The tenant said in response to the allegation that he has done nothing criminal.

The landlord said he had a signed tenancy agreement, rent rolls, and a copy of a receipt for \$500.00 that was given to the tenant for July 2013 rent. I allowed the landlord to submit copies of this evidence after the hearing, on the proviso that he also provide copies of the evidence to the tenant. The tenant would then have one week to provide a written response to the new evidence. More than one week has passed since the hearing and the landlord has still not provided any evidence.

Analysis

I find that the tenant received the Unpaid Rent Notice on either December 5 or December 6, 2013. The tenant disputed the notice by making an application for dispute resolution on December 12, 2013. I find that the tenant did not dispute the Unpaid Rent Notice within five days of receiving it.

According to Section 46(5) of the Act, a tenant who has received a notice to end tenancy for unpaid rent or utilities is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date, unless he either pays the overdue rent or applies to dispute the notice within five days. Since the tenant did not either pay the overdue rent or apply to dispute the notice within five days, he is conclusively presumed to have accepted the end of his tenancy.

The tenant has applied for more time to apply to dispute the Unpaid Rent Notice. According to Section 66(2) of the Act, I can only extend the time limit in this circumstance if the landlord agrees or if the tenant deducted the unpaid amount because he believed it was allowed for emergency repairs or under an order from the RTB. In this case, the landlord has not agreed to an extension of the time limit and the tenant did not withhold the unpaid amount for emergency repairs or under an order from the RTB. Accordingly, I cannot extend the time limit. The tenant's application for more time to make application to cancel a notice to end tenancy is dismissed.

Based on the foregoing analysis, I find that the tenancy ended on January 15, 2014.

Since the Unpaid Rent Notice is effective in ending the tenancy, it is not necessary that I consider the Cause Notice.

Conclusion

The tenant's application is dismissed.

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: January 30, 2014

Residential Tenancy Branch