



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPT, OLC, FF,

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for the following: to cancel a notice to end tenancy for cause; to obtain an Order of Possession for the rental suite; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement; for the landlord to comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. The landlord failed to appear for the hearing. The tenant served the landlord with the hearing documents, a copy of the application and the evidence used in this hearing by registered mail on December 4, 2013. The tenant provided the Canada Post tracking number as evidence for this method of service and the tenant testified that the Canada Post website indicates that the documents were received by the landlord on December 5, 2014.

Section 90 of the Act states that documents served by mail are deemed to be received five days later. In the absence of evidence from the landlord to dispute the above, I find that the tenant served the landlord the required documents in accordance with the Act.

At the start of the hearing the tenant explained that: he was still residing in the unit; that he did not pay the filing fee for the cost of the application as this had been waived by the Residential Tenancy Branch; that his intention for the landlord to comply with the Act centered around the notice to end tenancy; and that he had not provided any supporting evidence for his monetary claim. As a result, the tenant withdrew all of his application apart from the portion requesting to cancel the notice to end tenancy for cause.

The tenant had not provided a copy of the notice to end tenancy and as this had been served to him by the landlord, I permitted the tenant, under Section 11.5 of the Rules of Procedure, to provide a copy after the hearing had concluded.

Issue(s) to be Decided

- Has the tenant established that the notice to end tenancy ought to be cancelled?

Background and Evidence

The tenant testified that this tenancy started in October, 2010 on a month to month basis. No written tenancy agreement was completed but the rent was established at \$500.00 payable by the tenant on the first day of each month.

The tenant testified that he had been served personally with a 1 Month Notice to End Tenancy for Cause on November 24, 2013. The tenant testified that the notice provided as evidence was difficult to read as the landlord's handwriting is not clear in many parts of the notice.

The tenant testified that his interpretation of the notice shows that it was issued on November 11, 2013 by the landlord and that it had an effective vacancy date of December 11, 2013. The second page of the notice states that reason for ending the tenancy is because the tenant has significantly interfered with or unreasonably disturbed the landlord and has seriously jeopardised the health or safety or lawful right of the landlord.

The tenant testified that the reason why the landlord issued him with the notice to end tenancy was to get rid of his cat. The tenant testified that, although he had grounds to keep the cat as it had been brought into the rental suite by the landlord's nephew and the tenant had agreed to baby sit it but eventually ended up inheriting and taking care of the cat, the cat is no longer residing in the tenant's rental suite.

Analysis

When a landlord issues the tenant with a notice to end tenancy for cause for the reasons documented above, the landlord bears the burden of proof in justifying the reasons why the notice was served to the tenant and providing evidence as to why the tenancy should be ended. The landlord is also responsible for providing the tenant with a notice to end tenancy that clearly communicates the information to the tenant.

The landlord failed to appear for the hearing and provided no documentary evidence in advance of the hearing to prove the reasons why the notice to end tenancy was served

to the tenant and prove that the notice clearly contained the correct contents as required by the Act. As a result, I cancel the notice to end tenancy for cause.

Conclusion

For the reasons set out above, I set aside the 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenant that was dated on November 11, 2013.

The tenancy will continue until it is ended in accordance with 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: January 27, 2014

Residential Tenancy Branch

