



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenant to cancel a notice to end tenancy for cause under the Residential Tenancy Act (referred to as the “Act”).

The tenant appeared for the hearing with an advocate and confirmed that the Notice of Hearing documents were served to the landlord personally on November 21, 2013. The landlord appeared for the hearing and confirmed receipt of the hearing documents. Based on this, I find that the tenant served the landlord as required by the Act

The landlord and tenant both provided affirmed testimony during the hearing but only the landlord provided one set of documentary evidence in advance of the hearing, within the time limits stipulated by the Residential Tenancy Regulations. Late evidence has not been considered in this decision.

Issue(s) to be Decided

- Has the tenant justified the reasons for making an application to dispute the notice to end tenancy outside of the allowable time limits?
- Is the tenant entitled to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord?
- Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

This tenancy started on February 15, 2012 on a month-to-month basis. A signed written tenancy agreement was completed and submitted as evidence which shows that rent was payable by the tenant to the landlord in the amount of \$320.00 on or before the first calendar day of each month.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause by registered mail on November 1, 2013. The landlord provided the Canada Post tracking number as evidence for this method of service. The notice was provided as evidence with an expected move out date of December 9, 2013 and shows the following reasons for ending the tenancy:

- The tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; and, seriously jeopardised the health, safety or lawful right of another occupant or the landlord;
- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security and safety or physical wellbeing of another occupant or the landlord; and,
- There has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant testified that the notice to end tenancy was received by him on November 15, 2013. The tenant's advocate verified this on the Canada Post website. The tenant then testified that he only collects his mail once a week and suffered from brain injuries which prevented him from making the application within the time limits. When the tenant was questioned as to why it still took him four days to make the application to dispute the notice, the tenant was unable to provide a sufficient explanation.

The landlord provided an extensive evidence package containing written submissions regarding the above reasons for ending the tenancy. In the landlord's written submissions, the landlord requested an Order of Possession based on the notice to end tenancy and this was confirmed during the hearing.

Analysis

I have examined the notice to end tenancy and I find that the contents and the way it was served to the tenant meet the requirements of the Act. Section 48(5) of the Act states that a tenant may dispute a notice to end tenancy for cause by making an application within 10 days after the tenant receives the notice. Section 90(a) of the Act states that a document served by mail is deemed to have been received 5 days later.

As the landlord served the notice to end tenancy to the tenant by registered mail on November 1, 2013, I find that the tenant was deemed to have received the notice on November 6, 2013 pursuant to Section 90(a) of the Act. As a result, the tenant had until November 16, 2013 to make an application to dispute the notice. The tenant claims that he did not receive the notice to end tenancy in the mail until November 15, 2013 which

is the date he signed for it. However, I find that tenant could still have made an application by November 16, 2013 but instead made the application four days later. The tenant claimed to have brain injuries which prevented him from making the application within this time limit. However, the tenant provided no documentary evidence to show that his medical condition prevented him from making the application within the allowable time limits. As a result, there is insufficient evidence before me that there are strong, compelling or exceptional circumstances that would allow me to extend this time period. As a result, I find that the tenant applied outside of the 10 day time limit.

Section 55(1) (a) of the Act states that a landlord may make an oral request for an Order of Possession during a hearing to dispute a landlord's notice to end a tenancy. In relation to the landlord's oral request for an Order of Possession, I accept the evidence before me that the tenant failed to dispute the notice **within** the 10 days granted under the Act and as a result, I find that the tenant is conclusively presumed under section 48(6) of the Act to have accepted that the tenancy ended and as a result, the landlord is entitled to an Order of Possession.

In determining the effective date of the Order of Possession, section 48(3) of the Act states that the notice to end tenancy must allow the tenant one clear rental month's notice regarding the end of tenancy date. The notice was deemed to have been served on the tenant on November 6, 2013 and rent is payable on the first day of each month. Therefore, I find that the effective date of vacancy is automatically changed on the notice, to December 31, 2013 pursuant to Section 53(1) of the Act. As this date has passed the landlord is entitled to an Order of Possession effective 2 days after service.

Conclusion

For the reasons set out above I dismiss the tenant's application without leave to re-apply and grant the landlord an Order of Possession which is effective 2 days after service on the tenant. This order is final and binding on the parties.

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 14, 2014

Residential Tenancy Branch

