



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MT, ERP, RR, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy; for an Order requiring the Landlord to make emergency repairs; for an Order authorizing the Tenant to reduce the rent; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, on January 30, 2014. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 31, 2014 the Tenant submitted one additional document to the Residential Tenancy Branch. The Tenant stated that this document was not served to the Landlord as evidence for these proceedings and it was therefore not accepted as evidence for the proceedings.

On March 05, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were sent to the Tenant by registered mail. The Agent for the Landlord cited a Canada Post tracking number that corroborates this testimony. He stated that he has checked the Canada Post website, which indicates the package was received by Canada Post on March 10, 2014; that the first attempted delivery was March 16, 2014; and that the package has not yet been delivered.

The Tenant stated that he checks his mail on a reasonably regular basis; that he checked his mail last week; and that he has not yet received notice that registered mail has been sent to him.

The Landlord was advised that I am unable to consider the evidence that has not yet been received by the Tenant, given that it was not served in accordance with timelines established by the Residential Tenancy Branch Rules of Procedure. The Landlord was given the opportunity to request an adjournment for the purposes of providing the Tenant with an opportunity to pick up the evidence that was sent by mail. The Agent for the Landlord declined that opportunity and opted to proceed with the hearing with the understanding that the evidence submitted to the Residential Tenancy Branch on March 05, 2014 would not be considered.

On March 07, 2014 the Landlord submitted a USB to the Residential Tenancy Branch. The Agent for the Landlord stated that a duplicate USB was not served to the Tenant and it was therefore not accepted as evidence for the proceedings.

Preliminary Matters

On January 30, 2014 the Tenant filed an Application for Dispute Resolution to dispute a Notice to End Tenancy that he stated he received on January 21, 2014. As the Tenant filed this Application for Dispute Resolution within the legislated time period, I find there is no reason to consider the Tenant's application for more time to apply to set aside a Notice to End Tenancy.

The Tenant indicated several issues in dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. In determining that the Notice to End Tenancy is the most urgent matter, I find that none of the deficiencies noted in the Tenant's written submission constitute an emergency repair, as defined by the legislation.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy and the application to recover the filing fee at this hearing. The balance of the Tenant's applications are dismissed, with leave to re-apply.

Issue(s) to be Decide

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Tenant stated that he believes this tenancy began in August or September of 2010. The Landlord and the Tenant agree that the tenancy began prior to the Respondent managing the rental unit in January of 2013.

The Landlord and the Tenant agree that the Tenant is required to pay monthly rent of \$870.00 by the first day of each month. The Tenant stated that prior to 2013 he paid his rent directly to his previous landlord either by cash or money order. The Agent for the Landlord did not dispute this testimony.

The Landlord and the Tenant agree that when the Respondent began managing the rental unit the Tenant was told he could pay his rent by direct deposit at a local financial institution. The Agent for the Landlord stated that for reasons unknown to him the financial institution would not accept a direct deposit payment for rent; that he does not know when the financial institution stopped accepting direct deposit payments; and that the financial institution informed the Tenant directly that the payments would not be accepted.

The Tenant stated that when he attempted to pay his rent by direct deposit a representative of the financial institution told him that the Landlord had not made proper arrangements for direct deposit payments, so he paid his rent by alternate means that month. The Tenant stated that when he attempted to pay his rent by direct deposit the following month a representative of the financial institution again told him that the Landlord had not made proper arrangements for direct deposit payments, so he again paid his rent by alternate means.

The Landlord and the Tenant agree that the Tenant was subsequently provided with the option of paying by email transfer or mailing payment to the Landlord's office in Victoria, B.C.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on January 20, 2014. The Tenant stated that he received the Notice on January 21, 2014.

The One Month Notice to End Tenancy, which was submitted in evidence by the Tenant, declares that the rental unit must be vacated by February 28, 2014. The Notice to End Tenancy indicates that the Landlord wishes to end the tenancy because the Tenant is repeatedly late paying rent.

The Agent for the Landlord stated that the Landlord received a money order for rent for March on March 06, 2014, in the mail. The Tenant stated that he mailed the money order on February 28, 2014.

The Agent for the Landlord stated that the Landlord received a money order for rent for February, in the amount of \$750.00, in the mail on January 31, 2014 and that the

Landlord received a second money order for rent for February, in the amount of \$120.00, in the mail on February 03, 2014

The Tenant stated that the bank made an error when they issued him a money order for \$750.00 on January 30, 2014 so he obtained a second money order for \$120.00. He stated that he mailed the \$750.00 money order on the morning of January 30, 2014 or January 31, 2014 and that he mailed the \$120.00 money order on the afternoon of the same day.

The Agent for the Landlord stated that the Landlord received a money order for rent for January in the mail on January 04 2014. The Tenant stated that he mailed the money order on January 01, 2014.

The Landlord and the Tenant agree that rent was paid on time for December of 2013.

The Agent for the Landlord stated that the Landlord received a payment of \$250.00 in the mail on November 05, 2013, which was a partial rent payment for November of 2013. The Agent for the Landlord stated that the Landlord received the remainder of the rent for November in the mail on November 12, 2013. The Tenant agreed he paid rent late in November, although he cannot recall when he mailed his rent payments.

The Agent for the Landlord stated that the Landlord received rent for October in the mail on October 16, 2013. The Tenant stated that he cannot recall when he mailed his rent payment for October of 2013.

The Agent for the Landlord stated that the Landlord received partial rent for August in the mail on August 25, 2013. The Tenant stated that he cannot recall when he mailed his rent payment for August of 2013.

The Landlord and the Tenant agree that in November of 2013 the Landlord served the Tenant with a letter in which the Landlord informed the Tenant that the tenancy will end if they receive any further late rent payments. The Tenant contends that the tenancy should not end on the basis of late rent payments as he has mailed all of his rent payments on time since that letter was received.

Analysis

On the basis of the undisputed evidence, I find that rent for this tenancy is due by the first day of each month. Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent when rent is due.

In circumstances such as these, where a tenant must mail a payment to an address in a different community, I find that rent should be considered paid on the day the rent payment is mailed. In reaching this conclusion I was influenced by the fact that the Landlord's decision to conduct business from a remote location should not unduly disadvantage the Tenant. Unless the Landlord provides a location within reasonable

proximity to the rental unit where the Tenant can personally deliver a payment, there can be no reasonable expectation that the rent payment will be received on the date it is due.

In circumstances such as these, where the Tenant pays his rent by money order, I find it unfair for the Tenant to be required to ensure that the payment is received by the first day of each month. Given that mail can sometimes take five days to be delivered, this would require the Tenant to have sufficient funds to purchase a money order before the rent is actually due. I find this to be inherently unfair, given that the Tenant's financial circumstances and/or source of income may make that difficult.

In determining this matter I have placed little weight on the evidence that the Landlord is also willing to accept payment by email transfer. As many people prefer not to conduct business via the internet and the Tenant never agreed to pay rent electronically, the Tenant is under no obligation to pay rent in this manner.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. On the basis of the undisputed evidence, I find that the Landlord mailed a One Month Notice to End Tenancy for Cause, served pursuant to section 47(1)(b) of the *Act*, on January 20, 2014 and that it was received by the Tenant on January 21, 2014.

I find that the Landlord submitted insufficient evidence to show that the payment for rent for March of 2014 was not mailed to the Landlord by March 01, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that it was mailed on February 28, 2014. Given that I have determined the rent must be mailed by the first day of each month, I cannot conclude that this rent payment was late.

I find that the Landlord submitted insufficient evidence to show that the payment for rent for February of 2014 was not mailed to the Landlord by February 01, 2014. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as an envelope with a post mark, which refutes the Tenant's testimony that rent was mailed on January 30, 2014 or January 31, 2014. Given that I have determined the rent must be mailed by the first day of each month, I cannot conclude that this rent payment was late.

The Agent for the Landlord stated that he has a copy of the envelope in which one of the rent payments was mailed, which has a post mark of February 01, 2014. Even if I accepted the Agent for the Landlord's testimony in this regard, I would find that the payment was still mailed on the date it was due.

I find that the Landlord submitted insufficient evidence to show that the payment for rent for January of 2014 was not mailed to the Landlord by January 01, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that it was mailed on January 01, 2014. Given that I have

determined the rent must be mailed by the first day of each month, I cannot conclude that this rent payment was late.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that all of the rent for November was not received by the Landlord until November 12, 2013. Section 90 of the *Act* stipulates that an item that is served by mail is deemed received five days after it is mailed. As there is no testimony or evidence to cause me to disregard this deeming provision, I find it reasonable to conclude that the final rent payment for November was mailed after November 01, 2013. I therefore find that rent was not paid on time in November of 2013.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that rent for October was not received by the Landlord until October 16, 2013. As there is no testimony or evidence to cause me to disregard this deeming provision of section 90 of the *Act*, I find it reasonable to conclude that the rent payment for October was mailed after October 01, 2013. I therefore find that rent was not paid on time in October of 2013.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that no rent for August was received by the Landlord until August 25, 2013. As there is no testimony or evidence to cause me to disregard this deeming provision of section 90 of the *Act*, I find it reasonable to conclude that the rent payment for August was mailed after August 01, 2013. I therefore find that rent was not paid on time in August of 2013.

Residential Tenancy Branch Policy Guidelines suggest that three late rent payments are the minimum number needed to end a tenancy pursuant to section 47(1)(b) of the *Act*. I concur with this policy guideline. As the Landlord has established that the Tenant was late paying his rent on at least three occasions, I would typically conclude that the Landlord has the right to end this tenancy as a result of repeated late payment of rent.

On the basis of the undisputed evidence, I find that in November of 2013 the Landlord served the Tenant with a letter which informed him that his tenancy would end if the Landlord received any further late rent payments. I find that this letter provided the Tenant with one more opportunity to pay rent on time. As all of the late rent payments were made prior to the Landlord serving this letter and I have concluded that the rent has been paid on time since that letter was served, I find that the Landlord cannot yet end this tenancy on the basis of repeatedly late rent payments.

To provide clarity to this tenancy and to ensure the Tenant is clearly aware of his rights and obligations in regards to this tenancy, the parties are advised that the Landlord has the right to serve the Tenant with another One Month Notice to End Tenancy if the Tenant does not pay the rent on time at any time in the future. To be entirely clear, one more late payment of rent may be sufficient grounds to end this tenancy.

To provide further clarity to this tenancy, if the Landlord provides the Tenant with a

location where a payment can be personally delivered that is within reasonable proximity to the rental unit, the Tenant will be obligated to ensure the payment is delivered by the first day of each month. In these circumstances the Tenant must ensure the rent payment is received on the date it is due even if the Tenant elects to send the payment to the local address by mail.

Conclusion

As the Landlord has not established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

As the Tenant's Application for Dispute Resolution has merit, I authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution.

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: March 20, 2014

Residential Tenancy Branch

