



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAKERAS INTERNATIONAL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, FF, O

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notices to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant and former landlords entered into a tenancy agreement for a tenancy set to commence on October 1, 2011. The tenancy is currently in a month-to-month status and the tenant is required to pay rent of \$1,400.00 on the 1st day of every month.

The tenant received a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) from the current landlord via registered mail on January 30, 2014 and the tenant filed to dispute both of them within the time limit for doing so.

The 10 Day Notice was issued on January 27, 2014 and indicates rent of \$1,400.00 was outstanding as of October 1, 2013. There was no dispute that the rent for October 2013 was paid late but that it was paid by the end of October 2013 and that there was no outstanding rent for October 2013 when the landlord issued the 10 Day Notice. The landlord explained that he mistakenly used the 10 Day Notice to document that rent for October 2013 was late.

The 1 Month Notice indicates two reasons for ending the tenancy:

1. The tenant is repeated late paying rent; and,
2. The tenant breached a material term of the tenancy agreement and did not correct the breach within a reasonable period of time after written notice to do so.

There was no dispute that the tenant has paid rent late on two occasions: July 2012 and October 2013. The landlord acknowledged that he has since learned that there needs to be a minimum of three late payments to end the tenancy for repeated late payment of rent.

The landlord acknowledged that he had not given the tenant a written notice advising him of a breach of a material term and acknowledged that issuance of the 1 Month Notice prior to a written breach letter was premature.

The parties did seek assistance in dealing with an ongoing dispute involving access to the landlord's realtor since the property is currently for sale and the landlord lives in another province. With a view to assisting the parties avoid future disputes I provided the following information to the parties:

- I informed the landlord of the landlord's obligation to either obtain the tenant's verbal consent for entry or to give the tenant proper written notice of entry and allow the required time for the tenant to receive such notice, as provided under sections 29 and 90 of the Act. The landlord was informed that he is responsible for ensuring any agent acting on his behalf complies with the Act.
- I cautioned the landlord that access should be made by the landlord or the landlord's agent as opposed to unknown individuals such as other realtors. The landlord was agreeable to giving a key to his realtor only, to act his agent, so that all showings would be accompanied by the landlord's realtor.
- I cautioned the landlord that the number of showings and showing times must be reasonable so as to not breach the tenant's right to quiet enjoyment of the rental unit.
- I informed both parties that a written notice of entry may include a date or dates up to 30 days in advance.
- I informed the tenant that upon receipt of proper written notice of entry the tenant must not interfere with access by the landlord or the landlord's agent during the time specified on the notice of entry.

- The tenant was concerned about access by the landlord's agent during which time the tenant or his spouse are working and the dog is at home unsupervised. The tenant was informed that if he receives proper notice of entry the appropriate care and control of the dog is his responsibility to arrange.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for reasons indicated on the Notice.

A 10 Day Notice is used where the tenant has failed to pay rent and the rent is outstanding when the landlord issues the 10 Day Notice. Where a landlord intends to caution the tenant about late payment of rent, a letter will suffice. In this case, I find the 10 Day Notice invalid since there was no outstanding rent for October 2013 when the Notice was issued. Therefore, the 10 Day Notice is of no effect and it is set aside.

With respect to each of the reasons indicated on the 1 Month Notice I find as follows:

- Residential Tenancy Policy Guidelines provide that in order to end a tenancy for repeated late payment of rent there needs to be at least three instances of late payment. Since there were only two late payments during this tenancy, I found there to be insufficient grounds to end the tenancy for repeated late payment of rent.
- In order to end the tenancy for breach of a material term, the landlord must first issue a written notice of a breach to the tenant. The written notice should outline: the nature of the breach, the action the tenant must take to correct the breach; and give a deadline for compliance. Written notices are to be delivered in one of the ways permitted under section 88 of the Act. Email communication is not recognized as a proper method of service. In the absence of a written notice of breach in this case, I found the landlord prematurely issued the 1 Month Notice for a breach of a material term.

In light of the above findings, I cancel the 1 Month Notice.

As both Notices to End Tenancy served upon the tenant have been cancelled or set aside, I award recovery of the filing fee to the tenant. In order to realize this award, the tenant is authorized to deduct \$50.00 from a subsequent month's rent payment.

As further information for the parties concerning the landlord's restricted right to enter the rental unit I have reproduced sections 29 and 90 of the Act below. It is important to note that the term landlord includes a landlord's agent by definition. Therefore,

reference to landlord in section 29 includes landlord's agent. I encourage the landlord to advise the tenant, ideally in writing, as to the identity of any persons acting as his agent to avoid confusion.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

When documents are considered to have been received

90 A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

[my emphasis]

In light of section 90, if the landlord is posting a 24 hour written notice of entry, the landlord must allow three days for the tenant to receive the notice and then add 24 hours before entering the unit.

Conclusion

The Notices to End Tenancy issued on January 27, 2014 have been cancelled and the tenancy continues. The tenant has been authorized to deduct \$50.00 from a subsequent month's rent to recover the filing fee paid for this Application.

I have provided information to both parties with respect to the landlord's restricted right to enter the rental unit.

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 21, 2014

Residential Tenancy Branch

