



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for unpaid rent, for more time to make application to cancel a notice to end tenancy, and for other relief. The tenant clarified that the principle other relief he seeks is to change the day of the month when his rent is due.

The tenant attended the teleconference hearing and gave affirmed evidence. The landlord did not attend the hearing. A letter received by the RTB on February 13, 2014 from the landlord indicates the landlord does not consider himself to have been properly served with the Notice of a Dispute Resolution Hearing.

The tenant gave evidence that he filed his Application for Dispute Resolution (the "Application") online on January 5 or 6, 2014. The Application is in fact dated January 4, 2014. He states that the same day he filed the Application, he emailed it to the landlord, delivered it in person to the property management company's Maple Ridge office, and sent it by registered mail to the property management company's Vancouver office.

The Notice of a Dispute Resolution Hearing is dated January 7, 2014.

The tenant gave evidence that he received an email from the RTB which he opened on January 10, 2014. He states that the email contained the Notice of a Dispute Resolution Hearing. The tenant says he spoke to someone at the RTB, who told him he should send everything to the landlord by registered mail. The tenant says he sent the package to the landlord by registered mail, including the Notice of a Dispute Resolution Hearing and two amendments to the Application, on January 31, 2014. The tenant provided a Canada Post tracking number for the package sent on January 31, 2014.

The landlord's letter received February 13, 2014 references the same Canada Post tracking number and states that the package contained evidence but not the Notice of a Dispute Resolution Hearing.

In this case, the tenant gave affirmed evidence that the Notice of a Dispute Resolution Hearing was contained in the package sent by Canada Post registered mail on January 31, 2013. A letter provided by the landlord denies this. I accept the affirmed evidence of the tenant that the Notice of a Dispute Resolution Hearing was sent to the landlord in the January 31, 2014 package.

I note that the Notice of a Dispute Resolution Hearing was not served in the appropriate time frame for doing so. However, I have concluded that there is no prejudice to the landlord in dealing with the tenant's application as I have dismissed all of the tenant's claims below.

Issue(s) to be Decided

If so, should the notice to end tenancy be cancelled?
Is the tenant entitled to the other relief claimed?

Background and Evidence

The tenant gave evidence that he found a Notice to End Tenancy for Unpaid Rent (the "Notice") posted on his door on January 3, 2014. The Notice specifies that the tenant failed to pay \$850.00 in rent that was due on January 1, 2014, and specifies a move-out date of January 15, 2014.

The tenant gave evidence that he paid the \$850.00 on January 6, 2014. He gave further evidence that he paid rent for February 2014 on time.

The tenant gave evidence that he did not receive a notice to end tenancy for cause.

The tenant gave evidence that he receives child support from his former partner, and the process for receiving child support payments changed in approximately August 2013. He now receives his monthly child support payments from the Family Maintenance Enforcement Program instead of directly from his ex-partner. The new payment method has resulted in his receiving the payments after the first of the month. For that reason, he has in some months been unable to pay his rent on the first of the month. The tenant requests that his rent payment date be changed to the 5th day of the month.

The tenant said that he also wished to address some other issues related to his tenancy, such as harassment, rent increases, and concern about smoking by other tenants. However the tenant had to leave the hearing to start work, and there was not time to address any other issues.

Analysis

I find the tenant received the Notice on January 3, 2014. Since the tenant paid the outstanding amount on January 6, 2014, within five days of receiving the Notice, the Notice has no force or effect. For that reason, it is unnecessary that I cancel the Notice and I dismiss his application to cancel the Notice.

Since the tenant did not receive a notice to end tenancy for cause, I dismiss his application to cancel a notice to end tenancy for cause.

The tenant disputed the Notice within the applicable time limits, and so he does not require more time to dispute a notice to end tenancy. I therefore dismiss his application for more time.

A tenancy agreement is a contract between the landlord and tenant, and I do not have jurisdiction to change the terms of the contract. Therefore, I cannot change the date that the tenant must pay rent from the first day of the month to the fifth day of the month. Such a change can only be made by agreement of both parties. For that reason, I dismiss the tenant's application to change the day of the month when his rent is payable, without leave to reapply.

The tenant sought to address other issues at his hearing but there was insufficient time. I therefore dismiss these unrelated disputes with leave to reapply.

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: March 04, 2014

Residential Tenancy Branch

