



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, OLC, LRE

Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for unpaid rent (the Notice), dated and received January 18, 2014. The tenant further seeks for the landlord to comply with the Act and to suspend or set conditions on the landlord's right to enter the rental unit.

I accept the tenant's testimony that despite the landlord having been personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant testified they provided the landlord with a copy of their document evidence. The tenant was given opportunity to be heard, present evidence and make submissions.

Issue(s) to be Decided

Should the Notice to End dated January 18, 2014 be set aside?

Should the landlord be ordered to Comply with the Act?

Should the landlord's right to enter the rental unit be made conditional?

Background and Evidence

The tenant testified that they paid their rent in full on January 23, 2014 within the 5 days prescribed to do so rendering the Notice to End null. The landlord did not appear in the hearing to support their version respecting the Notice to End, nor to assert their version in respect to the tenant's other claims. The tenant described that they also received another Notice to End for Cause on February 28, 2014 which they have yet to determine. None the less, the tenant claims the landlord has repeatedly arrived at the rental unit and entered without prior notice to the tenant and disturbing the tenant on multiple occasions.

Analysis

On the undisputed evidence before me I find the landlord's Notice to End for unpaid rent may have been originally issued for valid reasons but no longer constitutes the basis for a dispute between the parties. Therefore, **I Order** the Notice to End dated January 18, 2014 is **cancelled**, or set aside.

Upon accepting the tenant's evidence of service upon the landlord, I find the landlord was provided with opportunity to respond to the tenant's claims, but did not make an appearance in the conference call hearing to address the evidence or claims of the tenant. On balance of probabilities, I accept the tenant's claim the landlord has been intrusive without providing the tenant with the required notice to enter the unit as afforded by **Section 29** of the Act, which states as follows.

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).

I Order the landlord to **Comply with the Act**. Specifically, to wholly comply with all parts of **Section 29** of the Act, forthwith, and for the landlord to comply, forthwith, with

only the prescribed means to *legally* access the rental unit. At this time, I find it is not necessary for the landlord's right to enter the rental unit be made conditional; however, If the landlord fails to strictly comply with Section 29 of the Act, the tenant is at liberty to reapply for dispute resolution and may be entitled to compensation for the landlord's breach of the Act given this Order.

Conclusion

The landlord's Notice to End for unpaid rent dated January 18, 2014 is **set aside and is of no effect.**

The landlord has been **Ordered** to fully Comply with **Section 29 of the Act.**

This Decision is final and binding on both 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: March 11, 2014

Residential Tenancy Branch

