



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Health Authority Seniors Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR

Introduction

This is an application filed by the tenant to be allowed more time to make an application to cancel a notice to end tenancy and if allowed, to obtain an order cancelling a notice to end tenancy issued for unpaid rent.

Both parties attended the hearing by conference call and gave testimony. The landlord has confirmed receiving the notice of hearing package and the tenant's documentary evidence. The tenant states that he has not received the entire package outlined of documentary evidence by the landlord. The landlord states that their evidence package which consists of 4 letters were sent by Canada Post Registered Mail to the tenant on March 29, 2014 and confirmed as being signed for by the tenant on April 1, 2014. The tenant has acknowledged receipt of a Registered Mail package on April 1, 2014, but states that he is only in receipt of 1 letter dated March 29, 2014. The landlord has stated that 3 of the letters are copies of correspondence with the tenant on September 30, 2013, October 10, 2013 and March 10, 2014. The landlord states that these letters show the progression of action by the landlord in response to the tenant's inability to pay the rent. The tenant has stated that he is not disputing that he is in rent arrears, but that because of poor accounting practices the landlord has suffered multiple NSF charges that he should not be responsible for. The landlord states that these letters were previously delivered by hand in person to the tenant and by posting it to the rental unit door on the date of each letter. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant in this case and that it is more likely that the 3 letters in dispute were previously provided to the tenant in prior correspondence as well as by Canada Post Registered Mail on April 1, 2014. As such, the landlord's documentary evidence is allowed.

The tenant seeks an order allowing him more time to make an application to cancel a notice to end tenancy issued for unpaid rent. In his application filed March 18, 2014 it states that he received the notice to end tenancy issued for unpaid rent on March 10,

2014 taped to his door. The Residential Tenancy Act states that documents served in this matter are deemed to have been received on the 3rd day. As such, the tenant has applied for dispute resolution on the 5th day following the receipt of the 10 day notice to end tenancy issued for unpaid rent. Although the applicant applied for an extension of time to make an application for dispute resolution, I find that in filing an application for more time/application for dispute resolution on the 5th day after being deemed to have received the notice, the tenant cannot be said to have filed beyond the statutorily prescribed timeframe. The tenant's application for more time is not necessary and the application for dispute resolution to obtain an order cancelling the notice to end tenancy shall proceed.

The landlord stated during the hearing that she wished to have the notice upheld. As such, I find that this was an oral request for an order of possession to end the tenancy.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel a notice to end tenancy issued for unpaid rent?

Is the landlord entitled to an order of possession?

Background and Evidence

Both parties agreed in their direct testimony that there is a signed tenancy, but that neither party submitted a copy of which. Both parties agreed that the current monthly rent is \$353.00 payable on the 1st of each month.

Both parties confirmed that the landlord served the tenancy with a 10 day notice to end tenancy issued for unpaid rent dated March 10, 2014 which was posted to the rental unit door on March 10, 2014. The notice states that the tenant failed to pay rent of \$1,659.00 that was due on February 1, 2014. The notice also displays an effective end of tenancy date of March 20, 2014. The tenant's details of dispute state, "My rental payments have previously been withdrawn automatically from my account, but when the payment defaulted, I was informed that I was behind in the rent. I request a chance to catch up with rent outstanding."

The landlord clarified that rent arrears of \$1,659.00 based upon the 10 day notice is for unpaid rent dating back from December 2012, February 2013, May 2013, August 2013 and September 2013 of \$364.00 plus a \$25.00 NSF charge for each month. Both

parties agreed in clarify that the tenant has made irregular payments making the current arrears for \$1,659.00. The landlord states that an agreement was made to catch up on the arrears by making supplemental payments of \$200.00 per month until July 1, 2014 as shown by the landlord's documentary letters dated September 30, 2013 which outlined rent arrears for 5 months, a letter dated October 10, 2013 which outlined an agreement for the tenant to make additional payments until July 1, 2014 of \$200.00 each month to clear the arrears and finally a letter dated March 10, 2014 which outlines the tenants current arrears as of that date and a warning that the tenant was responsible for paying rent when due along with the prior agreement for arrears. The landlord has also provided details that because of the arrears and repeated NSF charges that automated payments would no longer be accepted and that the tenant was to then make future payments by money order or bank draft. The tenant clarified that there was an agreement for him to try and pay this amount to catch up on arrears. The landlord states that the 3 letters show that the tenant was in arrears and that an opportunity was given to the tenant to catch up on the arrears, but that the tenant failed to comply with the agreement. The tenant's advocate argues that the landlord failed to provide any notice of arrears and waited until there was a sizeable amount. The landlord disputes this stating that the tenant is given a monthly statement outlining his account balance and that arrears were noted when he failed to make a payment.

Analysis

I accept the testimony of both parties and find that the landlord has established grounds for unpaid rent as the tenant is not disputing that rent arrears are owing. I prefer the evidence of the landlord over that of the tenant in that it is more likely that the landlord provided the letters of rent arrears and arranged a payment plan to get the tenant up to date with his rent. The tenant has not challenged the validity of the 10 day notice nor has he challenged that there was unpaid rent. The landlord has provided sufficient evidence to satisfy me that rent was owing and that the tenant failed to pay it. The tenant's application to cancel the notice to end tenancy is dismissed.

The landlord having provided sufficient evidence to satisfy me of unpaid rent is granted an order of possession. The order of possession must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession.

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: April 16, 2014

Residential Tenancy Branch

