



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Keefer Lodge
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR; OLC

Introduction

This hearing dealt with the Tenant's applications to cancel two *10 Day Notices to End Tenancy for Unpaid Rent or Utilities* issued March 12, 2014 and April 12, 2014 (together referred to as the Notices); and for an Order that the Landlord comply with the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord received the Notice of Hearing documents and copies of the Tenant's documentary evidence for both files, by registered mail.

Issues to be Decided

Should the Notices be cancelled?

Should the Landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that rent is \$311.00 per month, due on the 11th day of each month.

The parties attended a Dispute Resolution Hearing on January 24, 2014, which was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent or Utilities issued December 12, 2013. The Tenant's application was dismissed because the Arbitrator found that it was not necessary because the Tenant had paid the outstanding rent within 5 days of receipt of the notice to end tenancy. The Landlord agreed to provide the Tenant with a copy of the tenancy agreement.

The Landlord's agent gave the following testimony:

The Landlord's agent testified that the Tenant paid the outstanding rent within 5 days of receipt of the Notices. The Landlord's agent stated that he knocked on the Tenant's door if the rent was unpaid on the 11th of each month and that if the Tenant was not home, he put a notice to end tenancy on the Tenant's door.

The Landlord's agent stated that this Hearing is not necessary and that he was hanging up. I asked the Landlord not to leave the conference because I had some concerns about the Notices. He declined to stay and hung up 5 minutes after the Hearing commenced and did not return.

The Tenant gave the following testimony:

The Tenant stated that for the first six months of the tenancy, everything was fine and that he paid his rent in cash to the Landlord at the Landlord's residence. In October, 2013, the Tenant stated that it was freezing cold in his suite so he went to speak to the Landlord's agent (the building manager) to ask him to fix the heat, but he was not home. The Tenant left a note for the Landlord's agent. The Tenant stated that ever since then, the Landlord has required the Tenant to pay by cheque or money order.

The Tenant receives assistance from the government. He testified that in November, 2013, the Landlord's agent phoned the Ministry and complained that the Tenant had not paid his rent. The Tenant stated that he had paid his rent on November 14, 2013, but the Landlord's agent did not cash his rent cheque until December 5, 2013. The Tenant decided that he had to have proof of payment and when it was paid, so he started paying by Money Order. The Tenant stated that the Landlord's agent was available to take his rent in February, but was not home on March 11 or April 11, 2014. The Tenant stated that the Landlord would not guarantee to be home at a specific time on rent day.

The Tenant stated that he sent his rent for April, 2014, by registered mail, on April 4, 2014. The Tenant testified that the Canada Post tracking system indicates that a notice was left for the Landlord's agent on April 9, 2014, indicating where the Landlord's agent could pick up the cheque. The Tenant stated that the Landlord's agent did not pick up the cheque until April 14, 2014.

The Tenant stated that it was costing him additional money to pay his rent because of registered mail charges and the cost of money orders, and that he could not afford it. The Tenant stated that registered mail costs were \$11.34 each month.

The Tenant provided copies of rent cheques, registered mail receipts, Canada Post tracking system printouts and a Money Order dated April 4, ~~2013~~ **2014**, in evidence.

Analysis

I would have liked to have had the opportunity to speak to the Landlord's agent about a suitable method for the Tenant to pay rent, but was unable to do so before the Landlord's agent hung up.

Based on the Tenant's undisputed tenancy, I am satisfied that he paid rent when it was due, for April, 2014. I explained to the Tenant that my concern was that a landlord can end a tenancy for repeated late payment of rent, and that multiple notices to end tenancy for unpaid rent could be used unfairly against the Tenant, because they could be construed as proof that the Tenant was repeatedly late paying rent.

The Landlord is hereby cautioned against repeatedly issuing notices to end the tenancy when the rent has been paid on time. This can be construed as harassment.

I order that the Tenant may pay rent by cheque. I further order that the Tenant may mail May's rent to the Landlord by registered mail and may deduct \$11.00 from May's rent to cover this cost. To clarify, rent for the month of May, 2014, will be \$300.00. The Tenant is advised to provide a series of post-dated cheques, in the amount of \$311.00 each, for the months of June to November, 2014, in the same envelope as May's rent.

I find that the Notices are not valid notices. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notices to End Tenancy issued March 12 and April 12, 2014, are invalid. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Landlord is cautioned against issuing notices to end tenancy when the rent has been paid on time.

I order that the Tenant may mail rent for May, 2014, to the Landlord by registered mail and may deduct \$11.00 from May's rent to cover this cost. This must be mailed by May 6, 2014.

To clarify, rent for the month of May, 2014, will be \$300.00. The Tenant is advised to provide a series of post-dated cheques, in the amount of \$311.00 each, for the months of June to November, 2014, in the same envelope as May's rent.

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: May 05, 2014

CORRECTED MAY 26, 2014

Residential Tenancy Branch

