



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY (1974)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46; and
- b) To order the landlord to comply with the Act.

Service:

The Notice to End Tenancy is dated April 7, 2014 to be effective April 18, 2014 and the tenant confirmed it was served personally on him on April 7, 2014. The tenant /applicant and his advocate gave evidence that they served the Application for Dispute Resolution on April 9, 2014 by courier and provided some tracking information. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there was unpaid rent and reason under section 46 to end the tenancy or has the tenant demonstrated that the notice to end tenancy should be set aside? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

The landlord did not attend the hearing although served with the Application/Notice of Hearing. The tenant and his advocate attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The evidence is that the tenancy commenced in May 2011, it is a month to month tenancy, rent is \$375 a month and no security deposit was paid. The landlord served a Notice to End Tenancy for unpaid rent in the amount of \$325 noted as due April 1, 2014.

The tenant alleges that the Notice should be set aside because he paid the outstanding rent per the Notice to End Tenancy on April 9, 2014 and he enclosed the receipt for it.

However, the landlord accepted April rent that was owed according to the Notice to End Tenancy and then put on the receipt that he owes a further \$50.

The tenant gave evidence that his rent is paid directly from the Ministry and in normal circumstances, the Ministry requires shelter information at the beginning of a tenancy and then automatically sends the correct amount of rent each month. If there is a rent increase, new shelter information is required. However, the tenant alleges that the landlord in this case is demanding he complete shelter information every month, then submitting it to the Ministry who sends the amount requested for rent. He states that the landlord only requested \$325 for April and then is harassing him for a further \$50. He states that this is part of a pattern of ongoing harassment which is seriously interfering with his peaceful enjoyment. He requests that the Notice to End Tenancy be set aside and the landlord be ordered to observe his right to peaceful enjoyment free from unreasonable interference pursuant to section 28 of the Act.

Included with the evidence is a copy of the Notice to End Tenancy and receipt dated April 9, 2014.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Section 46 of the Act states a landlord may end a tenancy for unpaid rent but section 46(4) provides that if a tenant pays the overdue rent within 5 days of receiving the Notice to End Tenancy, the Notice has no effect. I find the Notice to End Tenancy for overdue rent in the amount of \$325 was served on the tenant on April 7, 2014 and he paid the overdue amount on April 9, 2014. Therefore, I find the Notice has no effect and I set aside the Notice.

I find the weight of the evidence is that the landlord is seriously interfering with the peaceful enjoyment of the tenant contrary to section 28 of the Act. The landlord submitted no documents to dispute the tenant's allegations and did not attend the hearing. Therefore I find no evidence as to why the landlord would be requiring this tenant to depart from the usual practice of completing shelter information once and having the Ministry rely on this to automatically send the rent payments monthly to them unless there is a rent increase when new shelter information would be required. Since the landlord supposedly completed the form for April with the incorrect amount, I find the tenant is entitled to rely on the amount requested for rent from the Ministry by the landlord. I find he owes no further rent for April 2014 as any shortfall is due to the landlord's actions.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated April 7, 2014 is hereby set aside. The tenancy is reinstated. I find the rent for April 2014 is paid in full.

I HEREBY ORDER that the landlord observe the tenant's right to peaceful enjoyment under section 28 of the Act and among other things, cease demanding he complete shelter allowance forms every month and cease demanding extra amounts of money for rent for April 2014.

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 02, 2014

Residential Tenancy Branch

