



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant: to cancel a notice to end tenancy for unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee for the cost of the Application.

The Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance for the Landlord during the 55 minute duration of the hearing but the Landlord did provide written evidence prior to the hearing.

The Tenant testified that she served the Notice of Hearing documents and a copy of the Application by registered mail to the Landlord on April 15, 2014. The Landlord provided the Canada Post tracking number as evidence for this method of service and the Canada Post website indicates that the Landlord received and signed for the documents on April 22, 2014. Based on this evidence and the submission of documentary evidence by the Landlord for this hearing, I find that the Tenant served the Landlord in accordance with section 89(1) (c) of the Act.

As a result, I have considered the undisputed testimony of the Tenant as well as the written evidence of both parties in this decision.

During the hearing, the Tenant withdrew her Application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and I amended the Tenant’s Application accordingly pursuant to section 64(3) (c) of the Act.

Issue(s) to be Decided

- Has the Tenant established that the notice to end tenancy ought to be cancelled?

Background and Evidence

This tenancy began on February 1, 2011 for a fixed term of one year after which it continued on a month to month basis. The Tenant testified that a written tenancy agreement was completed and rent at the start of the tenancy was \$1,350.00 which was increased after the first year to the current amount of \$1,385.00, payable on the first day of each month.

The Tenant testified that she was issued with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated April 5, 2014 by registered mail which she received on April 15, 2014. The Tenant provided the Notice as evidence for this hearing and shows an outstanding amount of rent of \$1,385.00 that was due on April 1, 2014; however the Landlord did not complete the effective move out date on the Notice.

The Tenant referred to a decision made on February 3, 2014 by a different arbitrator (the file number for which appears on the front page of this decision) relating to a hearing held on January 21, 2014 with the same parties in this Application. In relation to the pest problems the Tenant was suffering at the time of the hearing, the arbitrator writes in the decision, in part, the following:

"I also order the landlord to hire a licensed, professional pest control company, no later than February 15, 2013, to correct the rodent infestation as recommended by the licensed, professional pest control company and to issue a written report when the process has been completed and that the rental unit is free from rodents.

Until the completion of the full extermination, I grant the tenant a continuing rent abatement of \$250 per month and I further authorize the tenant to reduce future monthly rent payable by \$250 until such time as the licensed, professional company has issued its final report certifying that the process of extermination of the rodents is complete.

I order the landlord to provide the licensed, professional pest control company's written report to the tenant. Upon receipt of the written report verifying completion of the extermination of the rodents, the tenant will be obligated to resume payment of the full monthly rent starting the month following receipt of the written report. Example: if the landlord supplies the report to the tenant on March 2, 2014, the tenant's rent for March is reduced by \$250, but the tenant would have to pay the full amount of rent payable for April 2014."

[Reproduced as written.]

The Tenant testified that in April, 2014 she was not provided with the relevant paperwork the previous arbitrator had required to be provided to the Tenant before the rent would revert to the normal amount. As a result, in accordance with the arbitrator's instructions, she deducted \$250.00 from her April, 2014 rent cheque and sent the Landlord a cheque in the amount of \$1,135.00 on April 1, 2014.

The Tenant testified that the Landlord returned this cheque and served her with the Notice.

The Landlord provided documentary evidence showing a notice from the pest control company dated April 2, 2014 and another notice from the city dated April 15, 2014 indicating that the extermination process had been completed and the infestation had been cleared.

The Tenant testified that she has paid the normal amount of \$1,385.00 for May and June, 2014 rent.

Analysis

I have examined the Notice provided by the Tenant and I find that the method in which it was served to the Tenant complied with the requirements of section 88 of the Act and that the Tenant applied within the time limits to dispute the Notice.

However, sections 46(2) and 52(c) of the Act requires that a Notice must state the effective date of the vacancy of the rental unit. In this case, I find that the Landlord failed to state the effective date on the Notice provided as evidence.

Furthermore, I find that based on the arbitrator's decision dated February 3, 2014, the Tenant had authority under the Act to make the deduction from her rent until such time she was **provided** with a copy of a professional report from the pest control company verifying that the pest problem had been rectified.

The arbitrator was very specific in the wording of this requirement and explained that once the Tenant had **received** the report the Tenant would be able to resume normal payments **the following month**. The arbitrator even provided an example of this for further clarity and at no time was mention made that the date the Tenant would resume payment was based on when the work had been completed; it was based on the month the Tenant was **provided** the report.

The documentary evidence provided by both parties in relation to the pest eradication reports are all dated in April, 2014 and therefore there is sufficient evidence to prove that the reports could not have been served to the Tenant until April, 2014.

Conclusion

For the reasons set out above, I cancel the Notice issued by the Landlord dated April 5, 2014 and the tenancy will resume until it is ended in accordance with the Act.

As the Tenant has been successful in cancelling the Notice, I find that the Tenant is entitled to the \$50.00 filing fee for the cost of having to make this Application. The Tenant is authorized to satisfy this amount by deducting \$50.00 from her next or a future month's rent payment pursuant to section 72(2) (a) of the Act. The Tenant should inform the Landlord of her intention to redeem this amount when making a reduced monthly rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 04, 2014

Residential Tenancy Branch

