



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Horizon Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord company attended the call and each gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of wages?

Background and Evidence

The tenant testified that this month-to-month tenancy began on July 5, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable on the 5th day of each month and there are no rental arrears. The tenant paid \$600.00 to the landlord at the commencement of the tenancy as well as a security

deposit in the amount of \$300.00 on June 28, 2012 which is still held in trust by the landlord. No written tenancy agreement exists.

The tenant further testified that the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause and has provided a copy for this hearing. The notice is dated June 6, 2014 and contains an expected date of vacancy of July 9, 2014. The reason for issuing the notice states: "Tenant is repeatedly late paying rent." The tenant denies being repeatedly late paying rent and testified that he paid full rent for each of the months of May, June, July and August, 2014 prior to the 5th of the month.

The tenant further testified that when the tenancy began, the tenant paid rent by attending at the manager's house, who wasn't always there. The tenant received a letter from the new property managers which states that the tenant was to pay rent commencing with May, 2014 at the office of the new property managers, and the tenant did so.

The tenant has never been asked to pay rent at the beginning of the month, nor has the tenant ever been sent a letter from either property managers warning that rent was overdue.

With respect to the tenant's application for a monetary order, the tenant testified that he works as a contractor and work is out-of-town. The tenant does not have a vehicle and has to rely on transportation to job sites from other employees. The tenant had to take 2 days off work to deal with this dispute. The tenant earns \$17.00 per hour and hours vary, but each shift is no less than 8 hours. The tenant claims \$240.00 in lost wages as against the landlord.

The landlord's agent testified that he took over as property manager on May 1, 2014 and gave letters to each of the tenants advising them of that. Up until that time, the owners had problems getting rent on time from the tenant. The manager at the time didn't enforce the issue, so the owners hired a new property manager to enforce payment of rent when it is due. The owners also find the tenant to be unreliable in that regard, and cannot trust the tenant. The landlord has provided a copy of a tenant ledger covering the period of July 1, 2012 to April 30, 2014. The landlord's agent testified that ledger shows that the tenant has repeatedly paid rent beyond the first of each month.

The landlord's agent also testified that last year a hearing was convened before the Residential Tenancy Branch which resulted in an order of possession in favour of the

landlord for unpaid rent, but the manager at the time didn't enforce it. No copies of the decision or order have been provided.

When asked what day rent is payable under the tenancy agreement, the landlord's agent testified that it's always on the first day of the month. However, the landlord's agent agrees that there is no written tenancy agreement and he is not aware of the circumstances when the tenant moved in, such as the date the tenant moved in or if the tenant was credited a portion of rent for the first month of the tenancy.

The landlord's agent further testified that the notice to end tenancy given to the tenant is dated June 6, 2014 and was served by posting it to the door of the rental unit on that date. Giving the 3 days required by the *Act* for that method of service, the landlord's agent submits that the expected date of vacancy of July 9, 2014 is correct.

The landlord's agent agrees that he has never asked the tenant to pay rent at the beginning of the month, nor has the tenant ever been sent a letter from the property manager warning that rent was overdue.

In rebuttal, the tenant disagrees that the first hearing dealt with unpaid rent, and testified that the tenant was sent a letter by the landlord stating that the landlord did not intend to enforce the order of possession, and that all was fine. A copy of the letter has not been provided.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement. In this case, the tenant testified that he moved in on the 5th day of each month and paid a full month's rent, therefore rent is payable on the 5th day of each month. The landlord's agent was not able to say when the tenant moved in and was not able to dispute the tenant's testimony.

I have reviewed the notice to end tenancy issued by the landlord, and I find that it is in the approved form and contains information required by the *Act*. The *Act* also states that the notice must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. If the landlord had issued the notice in accordance with that section, then rent would be payable on the 10th day of the month.

I have also reviewed the tenant ledger, and it shows that the security deposit was paid on July 4, 2012 and rent was paid on July 10, 2012, but the tenant testified that the

security deposit was paid on June 28, 2012 and rent was paid on July 5, 2012, and has provided receipts to substantiate that testimony. At the top of the tenant ledger it states that the move-in date was July 1, 2012 and contains a move-out date of April 30, 2014. That portion also shows a \$0.00 deposit. The landlord's agent wasn't able to explain what happened with respect to rent payments prior to May 1, 2014, and I find that the tenant ledger is not reliable but was updated after the dates the money was paid.

I find that the landlord has failed to establish that rent is payable on the 1st day of the month, and I accept the testimony of the tenant that the tenancy began on the 5th day of the month and that is the date rent is payable.

In the circumstances, I find that the landlord has failed to establish that the tenant is repeatedly late paying rent.

With respect to the tenant's application for a monetary order, I have no evidence before me to support the claim of lost wages. There is no evidence of the amount of wages the tenant earns, no evidence that the tenant was to work on the dates described, and no evidence that the tenant could not have served the documents by registered mail, and I dismiss that portion of the tenant's application.

Conclusion

For the reason set out above, the notice to end tenancy issued by the landlord and dated June 6, 2014 is hereby cancelled and the tenancy continues.

The tenant's application for a monetary order is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: August 15, 2014

Residential Tenancy Branch

