



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stonecliff Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This was an application by the tenant to cancel a Notice to End the Tenancy for Non-Payment of rent dated July 2, 2014. Both parties were represented at the hearing.

Issue(s) to be Decided

Is the applicant entitled to an Order cancelling the Notice?

Background and Evidence

The landlord DM admitted service of the application. DM testified that he served the Notice to End the Tenancy to the applicant by registered mail and by posting it to his door on July 2, 2014.

DM testified that this tenancy began years ago however the current landlord purchased the Park in November of 2013 and he was not aware of any written tenancy agreement or the terms of the tenancy other than the rent was \$ 215.40 per month and that the rent was payable on the first day of each month. There was not any security deposit. DM testified that he delivered a written notice to every tenant in January of 2014 requiring all the tenants to pay the rent by mailing it to an address in West Vancouver. DM acknowledged that prior to that a manager or caretaker resided in a trailer at the park and rents were paid to him. DM testified that a manager no longer resides at the park although there is still a trailer where he can reside when he attends. The manager does attend periodically and is on call for emergencies.

DM testified that as of July 2, 2014 the date he issued the Notice to End the Tenancy he had not received the rent for July from the tenant. DM testified that on July 7, 2014

he received by express post an envelope post marked June 25 or 26, 2014 from the tenant. In that envelope was a Canada Post Bank draft for the rent dated June 25, 2014. DM opined that the reason the envelope was delivered so late was that the tenant had incorrectly marked the postal code. DM issued a receipt dated July 8, 2014 endorsed for "Use and Occupancy." DM consented to the cancellation of the Notice to End the Tenancy.

WB testified that he had always paid his rent to the on site manager when there was an on site manager. WB testified that he attended Canada Post on June 25, 2014 and purchased a draft amounting to \$ 215.40 and sent it the same day by express post, a service which is guaranteed next day or 2 day service. He has no idea why it did not arrive on time.

Mr. UK the tenant's advocate submitted that the landlord by requiring that the rent be sent by mail to an address in West Vancouver creates a hardship as most of the tenants including WB are low income would be required to open a bank account and furthermore rely on an unreliable mail service to deliver the rent to a distant location. UK submitted that rent payments could be delivered to the manger who resides in close proximity to the park.

Analysis

Section 39 of the Act states as follows:

- 39** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution

I find that the Notice to End the Tenancy was either received no earlier that July 2, 2014 or pursuant to the Act is deemed to have been received 3 days after posting it on the door which would be as late as July 5, 2014. The landlord acknowledged receipt of the

rent on July 7, 2014. According I find that pursuant to section 39 (4) (a) the rent was paid within the five days and therefore the Notice has no effect.

Conclusion

I have cancelled the Notice to End the Tenancy dated July 2, 2014. The tenancy is confirmed. As the applicant is successful I award him the filing fee of \$ 50.00 and direct that he may deduct that sum from his next rental payment without any penalty.

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: September 09, 2014

Residential Tenancy Branch

