



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 14, 2014 he personally served the Landlord with the Application for Dispute Resolution and Notice of Hearing. The Landlord acknowledged receipt of these documents.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

On September 03, 2014 the Tenant submitted four documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on September 03, 2014. The Interpreter for the Landlord stated that these documents were not received by the Landlord. As the Landlord did not acknowledge receipt of these documents and the Tenant submitted no evidence to corroborate his testimony regarding service of the documents, this package of evidence was not accepted as evidence for these proceedings.

On September 04, 2014 the Landlord submitted four documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Interpreter for Landlord stated that these documents were not served to the Tenant as evidence for these proceedings, although some of them had been previously provided to the Tenant. As these documents were not served to the Tenant as evidence for these proceedings, this package of evidence was not accepted as evidence and will not be considered when determining the merits of the Application for Dispute Resolution.

On September 11, 2014 the Tenant submitted four pages to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on September 11, 2014. The Interpreter for the Landlord stated that these documents were not received by the Landlord. As the Landlord did not acknowledge receipt of these documents and the Tenant submitted no evidence to corroborate his testimony regarding service of the documents, these documents were not accepted as evidence for these proceedings.

On September 15, 2014 the Tenant submitted three pages to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on September 15, 2014. The Interpreter for the Landlord stated that these documents were not received by the Landlord. As the Landlord did not acknowledge receipt of these documents and the Tenant submitted no evidence to corroborate his testimony regarding service of the documents, these documents were not accepted as evidence for these proceedings.

On September 19, 2014 the Landlord submitted four pages to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Interpreter for the Landlord stated that these documents were personally served to the Tenant, although she cannot recall the date of service. The Tenant acknowledged receipt of these four pages and they were accepted as evidence for these proceedings.

Preliminary Matter #1

On the Application for Dispute Resolution the Tenant initially indicated that he wished to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property. This claim has been subsequently crossed out, and initialled, by the Tenant. The Tenant stated that he does not know why he crossed out this selection.

I note that one of the documents submitted to the Residential Tenancy Branch by the Landlord on September 19, 2014 was a Two Month Notice to End Tenancy dated September ??, 2014.

Residential Tenancy Branch records show that the Application for Dispute Resolution was filed on August 14, 2014. As the Two Month Notice to End Tenancy was dated after August 14, 2014, I find it reasonable to conclude that the Application for Dispute Resolution was not filed for the purpose of disputing the Two Month Notice that was dated September ??, 2014.

The Tenant wished to argue the merits of the Two Month Notice to End Tenancy at these proceedings.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. This section requires an Applicant to fully and clearly inform the Respondent of the issues in dispute at these proceedings.

As the Tenant crossed out the claim to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property on the Application for Dispute Resolution, I find that the Landlord was not properly informed of the Tenant's intent to dispute this Notice at these proceedings. I therefore find that the merits of the Two Month Notice to End Tenancy should not be determined at these proceedings, as the lack of notice of this particular application places the Landlord at a significant disadvantage.

Preliminary Matter #2

At the hearing the Tenant was unable to explain why he is seeking an Order requiring the Landlord to comply with the *Act* or the tenancy agreement. There is nothing on the Application for Dispute Resolution which explains the details of this application. As the Tenant was unable

to articulate why such an Order is being sought, the application for this Order is not being considered.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Interpreter for the Landlord stated that this tenancy began on March 15, 2011. The Tenant does not recall when the tenancy began. The Landlord and the Tenant agree that rent is due by the first day of each month.

The Interpreter for the Landlord stated that on July 31, 2014 she and the Landlord posted a One Month Notice to End Tenancy for Cause to the door of the rental unit. The Tenant stated that he found this Notice folded into the side of his door on July 31, 2014. The Landlord and the Tenant agree that the One Month Notice to End Tenancy was dated July 31, 2014 and that it declared the Tenant must vacate the rental unit by August 30, 2014.

The Advocate for the Tenant stated that on August 08, 2014 he printed the Application for Dispute Resolution for the Tenant and he directed the Tenant to file the Application at the Residential Tenancy Branch. The Tenant stated that he filed his Application for Dispute Resolution to cancel this One Month Notice to End Tenancy as soon as he received the Application for Dispute Resolution from the Advocate for the Tenant. The Advocate for the Tenant acknowledged that he does not know if the Tenant filed the Application on that date.

The Tenant stated that he was driven to the Residential Tenancy Branch by a third party, who can confirm when it was filed with the Residential Tenancy Branch. I attempted to contact this witness at the telephone number provided, but only reached an answering machine for a counselling clinic. The Tenant was unable to provide an alternate telephone number for this witness and I was, therefore, unable to hear from this witness.

Residential Tenancy Branch records show that this Application for Dispute Resolution was filed on August 14, 2014. Residential Tenancy Branch audit notes show that the Tenant attended the Residential Tenancy Branch on August 14, 2014 with an advocate. The Tenant's Application for Dispute Resolution is date stamped August 14, 2014.

The Interpreter for the Landlord stated that after this One Month Notice to End Tenancy was served to the Tenant, the Landlord and the Tenant agreed that the One Month Notice to End Tenancy would be cancelled and that the tenancy would continue. The Tenant stated that he did not reach this agreement with the Landlord.

The Interpreter for the Landlord stated that on August 23, 2014, the Landlord and the Tenant both signed a document in which they agreed that the One Month Notice to End Tenancy would be cancelled and that the tenancy would continue. The Tenant stated that he did not sign this document; he has never had a copy of it; and he does not now have a copy of the document.

The Landlord and the Tenant agree that the Landlord has already paid the Tenant \$50.00 in compensation for the fee for filing this Application for Dispute Resolution.

Analysis

On the basis of the undisputed evidence, I find that on July 31, 2014 the Tenant received the One Month Notice to End Tenancy that is the subject of this dispute resolution proceeding.

On the basis of the undisputed evidence, I find that on August 08, 2014 the Advocate for the Tenant provided the Tenant with a blank Application for Dispute Resolution.

On the basis of the date stamp on the Application for Dispute Resolution and the Residential Tenancy Branch records regarding this matter, I find that this Application for Dispute Resolution was filed on August 14, 2014. I find that this documentary evidence is more compelling than the Tenant's testimony that he filed the Application for Dispute Resolution as soon as he received it from the Advocate for the Tenant. I find the documentary evidence more compelling simply because records made at the time of filing are typically more reliable than memory, especially since the Tenant is attempting to recall an event that happened almost two months ago.

In determining that the Application for Dispute Resolution was not filed until August 14, 2014, I have placed little weight on the testimony of the Advocate for the Tenant regarding the date of filing, as the Advocate for the Tenant has no direct knowledge of when the Application for Dispute Resolution was filed at the Residential Tenancy Branch.

In determining that the Application for Dispute Resolution was not filed until August 14, 2014, I was unable to consider evidence from the third party who drove the Tenant to the Residential Tenancy Branch, as that party was not available to testify at the hearing.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As the evidence shows that the Tenant did not dispute this Notice to End Tenancy within the legislated time period, I find that the Tenant is conclusively presumed to accept that the tenancy ended on the effective date of that Notice, which was August 30, 2014.

As I have determined that the Tenant is conclusively presumed to accept that the tenancy end on the effective date of that Notice, I must dismiss the Tenant's application to set aside the One Month Notice to End Tenancy.

At the conclusion of the hearing I noted that the Tenant submitted a copy of a document, dated August 23, 2014, when he submitted documents to the Residential Tenancy Branch on September 03, 2014. In this document, which appears to be signed by the Landlord and the Tenant, the Landlord and the Tenant agreed that the Notice to End Tenancy has been terminated and that the tenancy will continue.

At the conclusion of the hearing I also noted that the Landlord submitted a copy of this same document to the Residential Tenancy Branch on September 04, 2014.

Although the documents that were submitted to the Residential Tenancy Branch by the Landlord on September 04, 2014 and the documents that were submitted to the Residential Tenancy Branch by the Tenant on September 03, 2014 were not accepted as evidence, I find it reasonable to consider this one document when determining this matter. I find it reasonable to consider this one document, in part, because it is clear that both parties are, or have been, in

possession of this document and, in part, because I find it highly relevant to this matter.

On the basis of the document, dated August 23, 2014, I find that the Landlord and the Tenant mutually agreed that the One Month Notice to End Tenancy should be cancelled and that the tenancy should continue. I therefore find that agreement reached by the parties on August 23, 2014 served to reinstate the tenancy. **I therefore find that the One Month Notice to End Tenancy that was served on July 31, 2014 does not serve to end this tenancy.**

I find that this document, dated August 23, 2014, directly contradicts the Tenant's testimony that he did not enter into this agreement. As the document corroborates the Interpreter for the Landlord's testimony that they did reach this agreement, I favour her testimony of the testimony of the Tenant in this regard.

On the basis of the undisputed evidence, I find that the Landlord has already compensated the Tenant for the cost of filing this Application for Dispute Resolution. I therefore dismiss the Tenant's application to recover this fee.

Conclusion

As the One Month Notice to End Tenancy that was served on July 01, 2014 does not serve to end this tenancy, this tenancy must continue until it is ended in accordance with the *Act*.

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: October 16, 2014

Residential Tenancy Branch

