



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing dealt with the tenants Application for Dispute Resolution seeking to cancel two notices to end tenancy. The tenants originally applied to dispute a 1 Month Notice to End Tenancy for Cause on July 29, 2014. On September 4, 2014 the tenants amended their Application for Dispute Resolution to include disputing a 10 Day Notice to End Tenancy for Unpaid Rent.

The hearing was conducted via teleconference and was attended both tenants; their five witnesses; two agents for the landlord; and two witnesses for the landlord.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on February 20, 2013 as a month to month tenancy for the monthly rent of \$925.00 due on the 1st of each month with a security deposit of \$462.50 paid.

The tenants submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated July 24, 2014 with an effective vacancy date of August 25, 2014 citing the tenants have allowed an unreasonable number of occupants in the unit; the tenants or persons permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

While neither party submitted a copy the parties did agree that on August 27, 2014 the tenants received a 10 Day Notice to End Tenancy for Unpaid Rent with an effective vacancy date of September 8, 2014 due to \$1,249.00 in unpaid rent. The tenants amended their original Application for Dispute Resolution to include this issue on September 4, 2014.

The tenants originally testified that they did not believe they owed any rent because their rent is paid directly from the Ministry of Social Development and Social Innovation. However they later indicated that sometimes their rent cheques were held by the ministry and are later released.

The landlord submits that the tenants run a bike repair business out of their rental unit and that they operate this business at all hours of the day and night and as a result they are disturbing others in the complex. The landlords also submit that they suspect that some of the bikes are stolen. The tenants submit that none of the bikes are stolen; that some are brought in from the local reserve and that police are aware of the work the tenants are doing.

The landlord submits also that the tenants are dealing in illegal drugs from the rental unit and that as a result there is traffic to the rental unit at very late hours during the day and night. The landlords also submit another one of the tenants in the complex overdosed as a result of drugs purchased through the tenants.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From the testimony of both parties I accept the tenants received the 10 Day Notice to End Tenancy on August 27, 2014. As such, I find that to be compliant with the requirements under Section 46(4) the tenants would have had to either pay the outstanding rent in full or file their Application, or in this case their amendment to their Application, within 5 days of receiving the 10 Day Notice.

There was no evidence before me that tenants paid the outstanding rent identified on the Notice in full. I accept that on September 4, 2014 the tenants did submit an

amended Application to include requesting to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the tenants filed their amendment 7 days after receiving the 10 Day Notice and as such, pursuant to Section 46(5) are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

As I have found the tenancy will end as a result of the tenant's failure to apply to dispute the 10 Day Notice within the required timeframe I make no findings on the effectiveness of the 1 Month Notice to End Tenancy for Cause.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and order the tenants must vacate the rental unit in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 27, 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: October 6, 2014

Residential Tenancy Branch

