



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 4, 2014 ("10 Day Notice"), pursuant to section 46.

The landlord did not attend this hearing, although I waited until 11:36 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenants' agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. At the outset of the hearing, the tenants' agent confirmed that he had authority to appear as agent on behalf of both tenants at this hearing.

The tenants' agent testified that a 10 Day Notice was posted to the door where the tenants were residing, on November 4, 2014, and that both tenants received the notice on this date. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the 10 Day Notice on November 4, 2014.

The tenants' agent testified that he witnessed his colleague, SS, personally serve the landlord's agent with the Application for Dispute Resolution hearing package ("Application") on November 10, 2014. Section 89(1)(b) of the *Act* permits service of an application by leaving a copy with an agent of the landlord. The tenants' agent confirmed that he witnessed his colleague leave the Application with the receptionist of the landlord, after being told to do so by the landlord's principal, SM. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the Application on November 10, 2014.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The tenants' agent testified that he is not aware as to when this month to month tenancy began. Monthly rent is payable in the amount of \$750.00 total for both tenants, due on the first day of each month. A security deposit was paid for this tenancy but the tenants' agent was not aware of the amount. The tenants continue to reside in the rental unit.

The tenants occupy a double-room occupancy rental unit in a hotel and have been there prior to the new landlord taking control of the rental unit building. The tenants' agent stated that these tenants did not sign a transitional housing agreement with the new landlord, who assumed control of this building recently. This agreement is referenced in an addendum letter to the 10 Day Notice, which the tenants provided with their Application. The addendum letter states that if tenants intend to sign a "transitional housing agreement," they should notify the landlord and the 10 Day Notice will become null and void.

The landlord did not appear at this hearing to provide any evidence as to whether the rental unit building is living accommodation provided for transitional housing, thereby invoking a jurisdictional question under section 4(f) of the *Act*. This question would raise whether the *Act* applies to this tenancy and whether I have jurisdiction to hear this matter.

The tenants' agent testified that this matter is governed by the *Act* and I do have jurisdiction to hear this matter. He stated that he did not have any notice from the landlord, prior to this hearing, that it was raising a jurisdictional question in relation to this hearing. He testified that this is not transitional housing, as it does not provide housing relocation assistance to tenants as far as he is aware, there is no time limit on the length of each tenancy and there is no criteria or screening process to apply for this housing. He is not aware of any on-site support services for tenants and noted that it would be beneficial to tenants if they were available. The tenants' agent further stated that these tenants were already living in the rental unit building in a double room occupant tenancy prior to the new landlord assuming its role. Moreover, he stated that the landlord's issuance of the 10 Day Notice to these tenants, is a clear indication that the *Act* applies, given that the landlord is using a Residential Tenancy Branch (RTB) form to end this tenancy under the *Act*.

The tenants' agent stated that the tenants were given a 10 Day Notice for unpaid rent in the total amount of \$1,500.00 for unpaid October and November 2014 rent. The tenants' agent testified that the tenants paid both amounts in full. He indicated that the landlord made a recordkeeping error.

The tenants' agent referenced a letter from the landlord, dated November 14, 2014, addressed to both tenants at their rental unit address, indicating that rent up to and including November 1, 2014, was paid in full by both tenants. It further stated that the RTB file, referencing this specific file number on the front page of this decision, was rescinded by the landlord. The tenants did not provide this letter with their Application, but I requested that the tenants' agent send this letter via facsimile, immediately after the hearing. I received this letter on December 5, 2014, and reviewed it to confirm the above details, which are correct, before writing this decision.

Analysis

Jurisdictional Question

Section 4(f) of the Act provides that the Act does not apply to "living accommodation provided for emergency shelter or transitional housing". The Act does not define "transitional housing." However, it is clear from the word "transition" that the meaning indicates a temporary state between movement from one point to another. Such housing in the present context then implies that the accommodation is temporary and time limited or an intermediate step between homeless or at risk of being homeless and being permanently housed. A key determinant of transitional housing therefore would be the length of tenancy offered by the housing provider and the provision of assistance to move to permanent housing. In this present case, the tenants' agent has indicated that there is no limit on the length of time that a person can stay in the units. Further, the tenants' agent stated that anyone can apply for the housing offered. This clearly indicates that the housing is not offered solely to those who are in a transition state. The lack of criteria for the determination of tenancies, combined with the undisputed evidence of the tenants' agent, leads one to reasonably expect that any tenant may become permanently housed in the units and that the units and the tenancies in those units are not transitional in nature.

In this case, a tenancy agreement was already in place, a security deposit was taken and the rental amount for a one room unit is not a significantly discounted rent. These are all indicators of a standard residential tenancy that would otherwise fall under the jurisdiction of the *Act*.

Given the above analysis of transitional housing, and the fact that the tenants' evidence is undisputed since the landlord did not appear at this hearing to even raise a jurisdictional question, I find that the tenants' unit is not a transitional unit within the meaning of the *Act* and therefore the dispute between the parties may be resolved through the application of the *Act*.

10 Day Notice Issue

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent or file their application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants' agent gave undisputed sworn testimony that both tenants paid their rent in full and the landlord confirmed this via a November 14, 2014 letter. The tenants filed their Application within five days of receiving the 10 Day Notice, as they received the 10 Day Notice on November 4, 2014 and applied on November 5, 2014. Accordingly, the tenants complied with the five day limit under the *Act*.

Where tenants apply to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord did not submit any evidence or appear at this hearing. The landlord did not meet its onus of proof. Thus, the 10 Day Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the *Act*.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice. The 10 Day Notice, dated November 4, 2014, is set aside and is of no force or effect. This tenancy continues.

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: December 11, 2014

Residential Tenancy Branch

