



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's 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's agent, MC ("landlord") and the tenant's agent, SS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. At the outset of the hearing, both agents confirmed that they had authority to appear as agents on behalf of the landlord and tenant at this hearing.

The landlord testified that a 10 Day Notice was posted to the door where the tenant was residing, on November 4, 2014. The tenant's agent confirmed receipt of the 10 Day Notice on behalf of the tenant. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice as declared by the landlord.

The tenant's agent testified that she personally served the landlord's agent with the Application for Dispute Resolution hearing package ("Application") on November 10, 2014. Section 88(b) of the *Act* permits service of an application by leaving a copy with an agent of the landlord. The tenant's agent confirmed that she left 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.

During the hearing, the landlord made an oral request for an order of possession against the tenant, if I were to find that I have jurisdiction to hear this matter.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on December 1, 2013. The landlord was unsure as to the amount of rent payable each month. He testified that the tenancy agreement stated that rent was \$450.00 but later testified that rent was \$750.00, with each tenant responsible for \$375.00. A security deposit was paid for this tenancy. The tenant continues to reside in the rental unit. The landlord did not produce a tenancy agreement or a transitional housing agreement for this or the previous tenancy under the former landlord.

The landlord testified that the tenant made a double occupancy rental unit request and that he resides in the unit with his female friend. He stated that the rent was increased from \$375.00 to \$750.00 for both tenants, when this double occupancy was put in place. The tenant's agent stated that the tenant sometimes has his female friend staying with him in the rental unit.

The tenant's agent testified that the tenant has been in the rental unit prior to the new landlord taking control of the rental building, in a single room occupancy unit, on a month to month tenancy. The tenant's agent stated that the tenant signed a transitional housing agreement with the new landlord on October 28, 2014, out of fear that he would be evicted from his rental unit. This agreement is referenced in an addendum letter to the 10 Day Notice, which the tenant provided with his Application. The addendum letter states that if tenants intend to sign a transitional housing agreement ("THA") they should notify the landlord and the 10 Day Notice will become null and void. The tenant's agent testified that because the tenant signed the agreement, that his 10 Day Notice was voided, as per the above.

According to section 4(f) of the *Act*, if the rental unit building is living accommodation provided for transitional housing, the *Act* does not apply and I would not have jurisdiction to hear this matter. The landlord testified that I do not have jurisdiction to hear this matter because the rental building is a transitional housing accommodation, while the tenant's agent stated the opposite.

The landlord testified that this tenancy is a transitional housing accommodation because the tenant and landlord signed the THA, which was effective beginning on November 1, 2014. He stated that the THA specifically indicates that the *Act* does not apply and that

the guidelines of the whole-life housing program with a continuum of transitional housing flow, applied. The landlord was unable to explain the meaning of this provision. The landlord confirmed that there is no specific time limit on the length of this tenancy. He indicated that the building offers assistance with cleaning, has outreach teams on site for tenants, and there are conduct restrictions on the behaviour of tenants. He further stated that community contacts were established with hospitals and addiction counselling facilities.

The tenant's agent testified that this matter is governed by the *Act* and I do have jurisdiction to hear this matter. She testified that this is not transitional housing, as there are no transitional housing provisions or policies in place by the landlord. She stated that there is no time limit on the length of each tenancy and there are no support services on-site for tenants. The tenant's agent further stated that this tenant was already living in the rental unit building in a single room occupant tenancy on a monthly basis, prior to the new landlord assuming its role. She testified that the tenant felt compelled to sign the THA for fear of being evicted, and that it is illegal to contract out of the *Act*, which was an intention stated in the THA. She referenced section 5 of the *Act*, stating that landlords and tenants cannot avoid or contract out of the *Act* or regulations and any attempt to do so, is of no effect.

The tenant's agent stated that the tenant was given a 10 Day Notice for unpaid rent in the total amount of \$1,500.00 for unpaid October and November 2014 rent. The tenant's agent testified that the tenant paid \$375.00 for October and November 2014. The landlord confirmed that the tenant paid these amounts, but stated that the other tenant in the rental unit, SB ("SB"), did not pay her share of \$375.00 for each of October and November 2014 rent. The tenant's agent stated that SB had a settlement agreement with the landlord in relation to October and November 2014 rent. The landlord did not have information with respect to this agreement but indicated a desire to try to settle this matter and achieve an agreement with the tenant's agent.

The tenant's agent stated that the landlord is unaware as to the exact amount of rent due per month for this rental unit, as he stated that it was \$450.00 and \$750.00. She indicated that there was no legal notice of rent increase that the rent was being increased from \$375.00 for the tenant to \$750.00 for two tenants.

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 tenant’s agent has indicated that there is no limit on the length of time that a person can stay in the units. Further, the landlord’s evidence that support services are offered on-site is disputed and he provided no documentary evidence of this. He did not provide a copy of the THA that is the subject of this tenancy, for this hearing. Given the above, one may 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, prior to the THA being signed. A security deposit was taken. These are all indicators of a regular leased accommodation that would otherwise fall under the jurisdiction of the Act. Further, section 5 of the Act operates to prevent parties from contracting out of the Act and regulations. I find that the intention of the THA for this specific tenancy, was to avoid the Act, as it states specifically in the THA that the Act does not apply. The landlord also advised tenants, via the letter accompanying the 10 Day Notice, that if they signed the THA, their 10 Day Notice would be null and void, thereby confirming that the eviction process would be stopped if the tenants complied. Further, given that the landlord used a Residential Tenancy Branch (RTB) 10 Day Notice form and intended to evict the tenant in accordance with the Act, I find that it intended for the Act to apply to this tenancy.

Given the above analysis of transitional housing, I find that the tenant’s unit is not a transitional unit within the meaning of the Act and therefore the dispute between the parties falls within the Act and may be resolved through the application of the Act.

10 Day Notice Issue

In accordance with subsection 46(4) of the Act, the tenant must either pay the overdue rent or file his application for dispute resolution within five days of receiving the 10 Day Notice. In this case, both parties agreed that the tenant paid his rent for both October and November 2014, in the amount of \$375.00 for each month. The tenant filed his Application within five days of receiving the 10 Day Notice, as he received the 10 Day

Notice on November 4, 2014 and applied the next day on November 5, 2014. Accordingly, the tenant complied with the five day time limit under the *Act*.

Where a tenant applies 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 provide an original tenancy agreement ("OTA") with the previous landlord or the THA, for this tenancy. He was unaware as to the amount of rent due per month for this rental unit, as he stated two amounts, \$450.00 and \$750.00. He did not provide documentary evidence that another tenant, SB, signed the OTA or the THA and owed rent of \$375.00 or \$450.00 for this rental unit and that this was still outstanding for October and November 2014 rent. The tenant's agent testified that SB reached an agreement with the landlord for payment of October and November 2014 rent and that she stayed over on certain occasions. It is not clear whether SB is even a tenant in this rental unit, even though her name is stated on the 10 Day Notice. The landlord testified that the tenant owed no outstanding rent for October and November 2014. There was no notice of rent increase from the landlord, provided for this hearing, if the rent was increased from \$375.00 to \$750.00. The tenant's documentary evidence states that the 10 Day Notice will be null and void if the tenant signed a THA, which both parties admit that he did sign. The landlord did not meet its onus of proof that the amount on the 10 Day Notice is outstanding for this tenant in this tenancy.

Thus, the 10 Day Notice is set aside and is of no force and effect. I decline to issue an order of possession to the landlord. This tenancy will continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice. I decline to issue an order of possession to the landlord. 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

