



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 attended this hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant disconnected from the hearing early at approximately 2:15 p.m., as he did not purchase enough minutes on his prepaid telephone to participate in the entire hearing. The hearing continued until approximately 2:27 p.m.

The landlord testified that the 10 Day Notice was posted to the door where the tenant was residing, on November 4, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 7, 2014, three days after its posting.

The tenant testified that he served the landlord with the Application for Dispute Resolution hearing notice and first written evidence package on November 6, 2014 by way of registered mail. The tenant stated that he also served the landlord's agent, DZ, personally with the notice and first written evidence package on November 11, 2014. The landlord confirmed that he received the notice and first written evidence package as stated above. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's notice and first written evidence package on November 11, 2014.

The tenant submitted second and third written evidence packages for this hearing, received by the Residential Tenancy Branch (RTB) on November 28, 2014 and

December 1, 2014. In accordance with Rule 3.14 of the RTB Rules of Procedure, this evidence was submitted late, as it was less than 14 days prior to the hearing. Upon questioning, the landlord confirmed that the landlord company had received the evidence prior to this hearing and had reviewed the information. Based on the sworn testimony of the landlord, I find that there would be no denial of natural justice in proceeding with this hearing and considering the tenant's second and third written evidence packages. I find that there would be no prejudice to the landlord in doing so.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The landlord testified that he is not aware as to when this month to month tenancy began, although it was several years ago. Monthly rent is payable in the amount of \$403.00 due on the first day of each month. A security deposit was paid for this tenancy but the landlord was not aware of the amount. The tenant continues to reside in the rental unit.

The tenant occupies a single room occupancy rental unit in a hotel and has been there prior to this new landlord taking control of the rental unit building. The landlord stated that he is unaware as to whether this tenant signed a transitional housing agreement with the landlord, who assumed control of this building recently around September 2014. 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," they should notify the landlord and the 10 Day Notice will become null and void.

The landlord stated that the rental building is a "transitional" building. According to section 4(f) of the *Act*, the *Act* does not apply to living accommodation provided for transitional housing, thereby invoking a jurisdictional question. The landlord testified that he was not raising a jurisdictional question with respect to this tenancy. He maintained that I had jurisdiction to hear this matter.

The landlord testified that this rental building encourages and assists tenants to find better, more affordable housing, but they are not required to use such services. There is no time limit on the length of each tenancy, although tenants are encouraged to try to find more permanent, self-supportive housing within a couple of years at the building, although some tenants have been there for many years. There is no screening process

or criteria to apply for this housing. Support services offered include information on how to maintain units independently and homemaking services. The landlord testified that this tenancy is currently a month to month tenancy with no specific date for the tenant to vacate the rental unit.

The landlord stated that the tenant was given a 10 Day Notice for unpaid rent in the total amount of \$806.00 for unpaid October and November 2014 rent. Both parties testified that the tenant paid October and November 2014 rent in full. The tenant provided evidence of money orders from October and November 2014, with his application, and the landlord confirmed that he had this information as proof that the tenant paid his rent. The tenant also provided a letter from the landlord, dated November 11, 2014, stating that the 10 Day Notice was rescinded as the tenant's rent for November 2014 was paid in full.

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 landlord indicated that there is no limit on the length of time that a person can stay in the units. Further, the landlord 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 other factors noted above, 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 and a security deposit was taken for the rental unit. These are all indicators of a regular leased accommodation that would otherwise fall under the jurisdiction of the Act. Moreover, the landlord's issuance of the 10 Day Notice to this tenant is an indication that the previous landlord intended for the Act to apply, given that it is using a Residential Tenancy Branch (RTB) form to end this tenancy under the Act.

Given the above analysis of transitional housing, and the fact that the landlord was not raising a jurisdictional question, I find that the tenant's rental 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 tenant must either pay the overdue rent or file his application for dispute resolution within five days of receiving the 10 Day Notice. The tenant filed his application within five days of receiving the 10 Day Notice. Where 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.

Both parties agreed that the tenant paid his rent in full for October and November 2014. The landlord testified, and confirmed in his letter of November 11, 2014, that the 10 Day Notice was cancelled.

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 tenant's 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

