



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 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 SM ("landlord"), the tenant and his agent SS (collectively "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. At the outset of the hearing, the tenant provided verbal confirmation that his agent had authority to speak on his behalf.

The tenant's agent testified that the tenant received the 10 Day Notice that was posted to the door of his rental unit, on November 4, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on November 4, 2014.

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 89(1)(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 agent SM, who confirmed this at the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's Application on November 10, 2014.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The tenant's agent testified that this tenancy began approximately six months ago, while the landlord believed that it began a few years ago. Monthly rent is payable in the amount of \$450.00 due on the first day of each month. A security deposit of \$450.00 was paid for this tenancy, as the rent was previously \$900.00 when the tenant was residing with another occupant. The other occupant vacated the rental unit in July 2014, so the tenant's rent was reduced to \$450.00 per month. The tenant continues to reside in the rental unit.

The tenant occupies a 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 the landlord company assumed control of this building recently in September 2014. A transitional housing agreement ("THA") 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 THA, they should notify the landlord and the 10 Day Notice will become null and void. The landlord stated that she cannot force any tenants to sign the THA.

The landlord stated that existing tenants of the building, who lived there prior to this new landlord assuming control of the rental building, are subject to the *Act*, and are not living in accommodation provided for transitional housing. She stated that this is the case for this current tenant. The tenant's agent confirmed that this tenant did not sign a THA and that he is subject to the *Act*. 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 she was not raising a jurisdictional question for this tenancy.

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, due on November 1, 2014, but that this amount was in error. She indicated that the rental arrears were previously \$900.00 total, as the tenant attempted to pay his rent in cash to the landlord, who would not accept cash. The tenant's agent confirmed that rent had been paid in full until November 30, 2014. The landlord confirmed that the tenant's rent has been paid in full until November 30, 2014 and that she was not pursuing the 10 Day Notice, which she indicated was rescinded.

Analysis

Since both parties did not raise a jurisdictional question, and the landlord confirmed that this tenancy was not living accommodation provided for transitional housing, 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*.

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 until the end of November 2014. The landlord confirmed that the 10 Day Notice was rescinded.

Thus, the 10 Day Notice, dated November 4, 2014, 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 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

