



Dispute Resolution Services

Page: 1

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 did not attend this hearing, although I waited until 9:53 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant's 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 tenant's agent confirmed that she had authority to appear as agent on behalf of the tenant at this hearing.

The tenant's agent testified that a 10 Day Notice was posted to the door where the tenant was residing, on November 4, 2014, and the tenant received the notice on November 5, 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 5, 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 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 tenant's agent testified that she is not aware as to when this month to month tenancy began, but noted that it has been ongoing for some time. Monthly rent is payable in the amount of \$600.00 due on the first day of each month. A security deposit was paid for this tenancy but the tenant's agent was not aware of the amount. The tenant continues to reside in the rental unit.

The tenant occupies a rental unit in a single room occupancy hotel and has been there prior to the new landlord taking control of the rental unit building. The tenant's agent stated that she is not aware as to whether this tenant signed 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 tenant provided with her 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 tenant's agent asserted that this matter is governed by the *Act* and I do have jurisdiction to hear this matter. She stated that she did not have any notice from the landlord, in discussions prior to this hearing, that it was raising a jurisdictional question in relation to this hearing. She testified that this is not transitional housing, as it does not provide housing relocation assistance to tenants unless they are being evicted by the landlord, there is no time limit on the length of each tenancy, there is no criteria to apply for this housing and it does not have any support services, that she is aware of, provided on-site to tenants. The tenant's agent further stated that this tenant was already living in the rental unit building in a single room occupant tenancy prior to the new landlord assuming its role.

The tenant's agent stated that the tenant was given a 10 Day Notice for unpaid rent in the total amount of \$1,200.00 for unpaid October and November 2014 rent. The tenant's agent testified that the tenant paid \$600.00 for October 2014 rent, prior to the 10 Day Notice being issued. She stated that the landlord admitted to her that it had made a recordkeeping error, such that it was not aware that the tenant had already paid

for October 2014 rent. The tenant's agent testified that the tenant paid \$600.00 for November 2014 rent, within five days of receiving the 10 Day Notice from the landlord.

The tenant's agent testified that the landlord advised her prior to this hearing, that it was withdrawing this 10 Day Notice as the rent for both October and November 2014 were paid in full and that it would not be taking any steps to evict the tenant.

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 tenant's 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 tenant's 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 is 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 regular leased accommodation that would otherwise fall under the jurisdiction of the *Act*. The tenant's agent stated that relocation services are only offered to assist tenants with obtaining other housing if they are being evicted by the landlord, not to find regular, more permanent accommodation for other reasons.

Given the above analysis of transitional housing, and the fact that the tenant's evidence is undisputed since the landlord did not appear at this hearing to even raise a jurisdictional question, 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 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 her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant's agent testified that the tenant paid the overdue rent owing for November 2014 within five days of receiving the 10 Day Notice. The tenant also filed her Application within five days of receiving the 10 Day Notice, as she received the 10 Day Notice on November 5, 2014 and applied on the same date. Accordingly, the tenant complied with the five day 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 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 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

