



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, RP, RR

Introduction

The tenant applied to cancel a 1 month Notice ending tenancy for cause, an Order the landlord make repairs to the rental unit and that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant provided affirmed testimony that on February 2 or 3, 2015 he personally delivered copies of the Application for Dispute Resolution and Notice of Hearing to the landlord. Service occurred in the early afternoon, at the landlord's door.

On February 12, 2014 the tenant personally served the landlord a copy of the amended application. Service occurred in the morning, at the landlord's door.

These documents are deemed to have been served on the day of personal delivery in accordance with section 89 and 90 of the Act, however the tenant did not appear at the hearing. The original application was given no later than February 3, 2015.

Preliminary Matters

The tenant served evidence, including a CD, with the amended application. He did not confirm the landlord had been able to access the digital evidence. This evidence was given thirteen days prior to the hearing; 1 day beyond the time required as set out in the Rules of Procedure. As the landlord was given the evidence and did not attend the hearing, in response to the application, this evidence was not set aside. The landlord would have been at liberty to object to the inclusion of this evidence.

The tenant served an additional 5 pages of evidence to the landlord; sent via registered mail and received on February 20, 2015. I determined that this evidence was not given at least 14 days prior to the hearing; as required by the Rules of Procedure and it was set aside.

The tenant indicated several matters of dispute on his application. I confirmed that the main issue was the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the Notice ending tenancy. Therefore, pursuant to section 2.3 of the Rules of

Procedure, I dealt with the tenant's request to cancel the 1 month Notice ending tenancy for cause. The tenant has leave to reapply. The tenant did not object.

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on January 22, 2015 be cancelled?

Background and Evidence

The tenant did not supply a copy of the Notice in dispute. The tenant testified that the Notice was issued on January 21, 2015; signed by the landlord with an effective date of February 28, 2015.

The tenant received the Notice on January 21, 2015 and applied to cancel the Notice within 10 days.

The Notice included 1 reason: the tenant is repeatedly late paying rent.

The tenant said that since he moved into the unit in February 2014 rent has been paid within the first few days of the month. There was no signed tenancy agreement. The landlord has never said anything to give him any indication that there was a specific rent due date. Initially the tenant paid rent by cash but the landlord was not issuing receipts so he began to pay by cheque. The landlord often does not cash the cheques for some time.

The tenant said he would not have any problem paying the rent on the 1st day of each month, if that is what the landlord would want. The tenant stated he could consider providing post-dated cheques, so that timely payment is not in question.

Analysis

When a tenant applies to cancel a Notice ending tenancy the landlord has the burden of proving the reasons on the Notice. As the landlord was served with Notice of this hearing and failed to attend, I find that the 1 month Notice ending tenancy for cause issued on January 21, 2015 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

As the Notice was issued based on an allegation of repeated late rent payment I find, pursuant to section 62(3) of the Act, that future rent will be due on the 1st day of each month. The tenant has agreed he can pay rent on the 1st day of each month and is at liberty to supply post-dated cheques to the landlord. It is not the date a cheque is cashed, but the date it is given to the landlord, for processing on the 1st day of each month, that determines when the payment has been made.

Conclusion

The 1 month Notice ending tenancy for cause issued on January 21, 2015 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

Rent is due on the 1st day of each month.

The balance of the tenant's claim is severed from the application; the tenant has leave to reapply.

This decision is final and binding and 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: February 26, 2015

Residential Tenancy Branch

