



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC

Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / and cancellation of a notice to end tenancy for cause. The tenant and the advocate assisting him attended the hearing in-person and gave affirmed testimony. The landlord did not appear.

The tenant filed his application for dispute resolution on March 04, 2015. The tenant testified that he served the landlord with his application and the notice of hearing (the "hearing package") by registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the item was "accepted at the Post Office" on March 05, 2015, that it was "unclaimed by recipient," and that it was later "successfully returned" to the tenant.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the hearing package was served on the landlord in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which is understood to have begun in September 2004. Monthly rent is due and payable in advance on the first day of each month. The current rent of \$810.00 is due to increase by \$20.00 to \$830.00 effective May 01, 2015.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 30, 2015. The notice

was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 28, 2015. Reasons identified on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

jeopardize a lawful right or interest of another occupant or the landlord

Tenant has caused extraordinary damage to the unit or property

Tenant has not done required repairs of damage to the unit

As earlier noted, the tenant filed an application to dispute the notice on March 04, 2015.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenant was served with a 1 month notice to end tenancy for cause dated January 30, 2015. As the notice was served by way of posting on the unit door on that same date, pursuant to section 90(c) of the Act, I find that it was deemed to have been received by the tenant 3 days later on February 02, 2015.

As the notice to end tenancy was received on February 02, 2015, pursuant to section 53 of the Act which addresses **Incorrect effective dates automatically changed**, I find that the effective date of the notice is March 31, 2015, not February 28, 2015 as shown.

Pursuant to section 47(4) of the Act, the tenant had 10 days after receiving the notice to file an application to dispute it. As I have found that the tenant received the notice on February 02, I find that the 10th day is February 12, 2015. However, as the tenant's application was filed outside the 10 day limit on March 04, 2015, he has applied for more time to make an application to cancel the notice.

Section 66 of the Act addresses **Director's orders: changing time limits**, and provides in part:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [*starting proceedings*] or 81(4) [*decision on application for review*].

Evidence submitted by the tenant in support of the existence of exceptional circumstances includes, but is not limited to, copies of email exchanges between the landlord and the tenant's advocate. I find that these exchanges suggest that the landlord had presently decided to discontinue with any formal proceedings to end tenancy. Having considered the affirmed / undisputed testimony of the tenant, in addition to the documentary evidence, I find that the tenant has established entitlement to an extension of time to make an application to cancel a notice to end tenancy.

Further to the foregoing, there is no application before me from the landlord in which the landlord has applied for an order of possession, and as the landlord was not in attendance to the hearing, although duly served, there was no oral request for an order of possession before me from the landlord. In the result, the landlord's notice to end tenancy is hereby cancelled, and the tenancy continues uninterrupted.

Conclusion

The landlord's 1 month notice to end tenancy for cause is hereby set aside, with the result that the tenancy continues in full force and effect.

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: April 13, 2015

Residential Tenancy Branch

