Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) pursuant to section 46.

The tenant filed his application 8 April 2015.

The tenant attended the hearing. The tenant was accompanied by his cotenant. The landlord attended the hearing.

There are two recent 10 Day Notices in respect of this tenancy:

1. A notice in respect of rent due 1 March 2015 in the amount of $12,573.00 (the March Notice). The March Notice is dated 23 March 2015. The March Notice sets out an effective date of 2 April 2015.
2. A notice in respect of rent due 1 April 2015 in the amount of $13,843.00 (the April Notice). The April Notice is undated and does not set out an effective date. The landlord indicated that his copy of the April Notice is dated. That copy was not provided as evidence. The cotenant stated that she received the April Notice on 2 April 2015.

Preliminary Issue – Relevant Legislation

This purported tenancy is for both a manufactured home and the manufactured home site. The landlord indicated in his 10 Day Notice that the notice was given under the *Manufactured Home Park Tenancy Act*. That act only deals with tenancy arrangements in respect of a site alone. As such, this arrangement is governed by the Act and not the *Manufactured Home Park Tenancy Act*.

Preliminary Issue – Withdrawal of Tenant's Application

At the hearing it became apparent that there were issues regarding the submission of evidence.

The cotenant stated that she did not know that she had to present evidence. I read the cotenant a portion of the Notice of a Dispute Resolution:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

The landlord purported to have a proof of service document that was not submitted. The tenant purported to have not received any evidence from the landlord.

The tenant and cotenant allege that this arrangement is a rent-to-own agreement. If it is such an agreement, then this Branch would not be competent to make a decision regarding the disposition of that property. The landlord stated that there was an earlier order of possession issued in respect of this tenancy. I asked the landlord if the issue of the rent-to-own agreement was raised at the earlier hearing: he said that it was not.

In order for the arrangement between the parties to fall under the jurisdiction of this Branch, the arrangement must be that of a "tenancy agreement". "Tenancy agreement" is defined in section 1 of the Act:

> "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Residential Tenancy Policy Guideline, "27. Jurisdiction" (Guideline 27) sets out:

> In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above [if the relationship between the parties is that of seller and purchaser of real estate or if the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises], then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

In order for me to consider the tenant's application, there must be an agreement that is in respect of possession of a rental unit, but cannot create an interest greater than this by conveying something "extra" to the tenant.

This is a complex issue that requires that the parties be in a position to explain the details of their business relationship. I was not of the view that the parties were in any position to make these submissions at the designated hearing time.

At the hearing I asked the tenant whether or not he would like to continue on the basis of the evidence he had entered so far or withdraw his application.

I explained to the tenant that given that he applied to cancel the March Notice past the effective date of that notice and that the April Notice was undated he would not be in any worse a position if he reapplied. As the tenant received the April Notice on 2 April 2015, but their application was not made until 8 April 2015, he was already in the position of requiring more time to make an application to cancel the April Notice. As there was no effective date on that notice there would not be a bar to extension.

I informed the tenant that the landlord could still bring an application to enforce the 10 Day Notice and that was a risk of withdrawal.

The tenant elected to withdraw his application.

I allowed the tenant to withdraw his application. I allowed that withdrawal as at that time there was no application pursuant to section 55 of the Act from the landlord so there was not any undue prejudice to the landlord in allowing the withdrawal.

After I allowed the tenant's withdrawal, the landlord asked what was going to happen with his application. I informed the landlord that he did not have any application before me. The landlord pointed me to the 10 Day Notices. I told the landlord that in order to make an application to enforce either or both of the 10 Day Notices the landlord had to bring his own application or make an oral request for an order of possession at the hearing. The landlord made an oral request at that time. I informed the landlord that it was too late to make the oral request as I had allowed the tenant to withdraw his application so there was no application before me. I informed the landlord that nothing that occurred prevented him from bringing his own application.

I reminded the parties of the importance of providing evidence in support of their application.

Conclusion

The tenant's application is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 20, 2015

Residential Tenancy Branch