



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on June 11, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail.

Preliminary Matter:

The landlord served a second 10 day Notice to End Tenancy on the Tenant on July 6, 2015. The tenant has applied to cancel that Notice. At the request of the parties I ordered that the hearing of that matter be brought forward and is to be heard in today's hearing.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 11, 2015?

- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated July 6, 2015.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant entered into a one year fixed term tenancy agreement with a real estate company that was described as the landlord. The tenancy was to start of October 1, 2014, end on September 30, 2015 and the tenant would have to vacate after that time. The real estate company was acting for OPC, an owner who lived overseas. The tenancy agreement provides that the rent is \$850 per month payable in advance on the first day of the month. The tenant paid a security deposit of \$425 on September 9, 2014.

On March 31, 2015 the real estate company described as the landlord in the tenancy agreement gave the tenant a notice in writing advising the tenant they would no longer be providing rental management services effective April 31, 2015 (presumably it meant to say April 30, 2015), as of that date they would no longer have authorization to withdraw any collection on rent and they would no longer be acting as an agent for the owner. The letter further states that the owner or a new Management Company would be contacting him about the collection of rent for May 1, 2015.

On April 30, 2015 the real estate company cancelled its management contracts with approximately 100 owners including the OPC, the owner of this rental property.

OPC retained the respondent in these proceedings to act as his agent. The agent has contacted the tenant demanding payment of the rent but the tenant applicant has refused to pay the rent to them. The applicant testified he has a contract with the real estate company that was named in the tenancy agreement. He further stated that he has not received notification from anyone as to the transfer of the tenancy agreement to the respondent.

I granted the respondent an extension of 7 days to provide the Residential Tenancy Branch and the Tenant with the following evidence:

- A Land Title Search which supports her testimony that OPC, the person named in the respondent's management contract as owner is the registered owner.
- Evidence that the real estate named in the tenancy agreement no longer had an interest in the tenancy agreement.

The Residential Tenancy Act provides the definition of landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

Analysis:

Based on the evidence presented I am satisfied that OPC is the owner of the property and is a landlord as defined by the Act. I determined that OPC entered into a management contract with the respondent and that the respondent has been authorized to collect the rents from May 1, 2015 onwards based on the following:

- The Land Title Search indicates that OPC is the owner.

- There is a management contract dated May 1, 2015 between OPC and the respondent.
- The previous real estate company has provided evidence it no longer has an interest in the tenancy agreement.

As a result I determined the respondent is entitled to receive rents for the rental property from May 1, 2015.

The agent for the respondent testified the security deposit that was held by the previous real estate company under the within tenancy agreement has been paid to the owner. Thus, that money is being held by the owner and not the previous real estate company.

In any event section 93 of the Act provides as follows:

Obligations pass with transfer or assignment of land

93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

Determination and Orders:

I determined based on the evidence presented that respondent is authorized to collect the rent for the rental property from May 1, 2015 onwards.

The landlord agreed to withdraw the Notice to End Tenancy dated June 11, 2015 and the Notice to End Tenancy dated July 6, 2015 on a without prejudice basis. **As the landlord has agreed to withdraw the two notices I ordered that the Notices be cancelled as withdrawn.** If the tenant fails to pay the outstanding rent the respondent has liberty to re-apply. The tenant applied to cancel the July 6, 2015 and that is set for hearing at the end of August. I ordered the application in that hearing be dismissed as the Notice has been withdrawn.

The materials filed by the Tenant purported to make a claim of \$2000 as aggravated damages. The tenant failed to properly amend his Application and this claim was not considered.

I ordered that the landlord pay to the tenant the sum of \$50 being one of the filing fees such sum may be deducted from future rent. All other claims in both files are dismissed.

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: July 24, 2015

Residential Tenancy Branch

