



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord's two agents attended; the tenant did not attend the telephone conference call hearing.

The landlords stated that they served the tenant with their application for dispute resolution and notice of hearing by registered mail on July 24, 2015, to the tenant's address. The landlords stated that the registered mail envelope containing the application for dispute resolution was returned them, marked "unclaimed", although the tenant remains living in the rental unit.

Based upon the submissions of the landlord's agents, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord's agents were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this tenancy began on September 10, 2014, monthly rent is \$1375.00, and a security deposit of \$687.50 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on July 7, 2015, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1375.00 as of July 1, 2015. The effective vacancy date listed on the Notice was July 17, 2015.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on July 12, 2015, and the effective move out date is automatically changed to July 22, 2015, pursuant to section 53 of the Act.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord's agent submitted that the tenant did made 2 separate payments of rent, \$2280.00 on September 2, 2015, and \$1500.40 on September 8, 2015, to bring the tenant current in his monthly rent.

The landlord's agent submitted that although the tenant has now paid rent in full, they still requested an order of possession for the rental unit in the event the tenant fails to make any future rent payments. The landlord's agent stated that they informed the tenant that he needed to attend the hearing.

In response to my question, the landlord's agents stated that they had not communicated to the tenant that they intended to go forward on their request for an order of possession once he paid his rent in full.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

In this case, I find the landlord submitted sufficient evidence to prove that the tenant was served a Notice pursuant to the Act and that the tenant owed rent when the Notice was issued, as declared by the landlord.

The evidence also shows that the landlord accepted rent after the effective date of the Notice, in this case, July 22, 2015, which brought the tenant current in his rent, according to the landlord. The landlord's request for a monetary order for unpaid rent is therefore dismissed.

Section 11 of the Residential Tenancy Guideline provides that if a landlord accepts the payments of rent for the period after the effective date of the Notice, then the intention of the parties will be an issue. According to the guideline, intent can be established by evidence when:

- *The receipt shows the money was received for use and occupancy only*
- *The landlord specifically informed the tenant that the money would be for use and occupation only*
- *The conduct of the parties indicates intention.*

In this case, the landlord presented no evidence that they issued the tenant a receipt showing that the payment was for use and occupation of the rental unit only.

The evidence also showed that the landlord did not inform the tenant that their intention was continue with their request for an order of possession for the rental unit to be able to serve if the tenant missed any further payment of rent.

I find it reasonable that the conduct of the landlord in accepting full rental payments indicated to the tenant that the tenancy was reinstated, in the absence of indicating to him otherwise.

Therefore, I find that by accepting the rent payments to bring the tenant current, in the absence of any communication the tenancy would end, that the implication was made

that the Notice ending tenancy issued on July 7, 2015, was waived. Therefore, I find that the Notice is of no force and effect and that the tenancy will continue until it is ended in accordance with the Act.

The landlord's application is dismissed.

The landlord remains at liberty to issue another Notice to the tenant, should he fail to pay future rent payments in accordance with the Act and the tenancy agreement.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent is 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: October 1, 2015

Residential Tenancy Branch

