



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr

Introduction

The tenant has applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities).

Both parties attended the hearing, and there are no issues as to service of the application upon the landlord, or as to service of the 10 Day Notice upon the tenant.

Issues to Be Decided

Is the 10 day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled?

Background and Evidence

The tenant submitted no written or photographic evidence to support his claim. He testified at the hearing as follows:

The landlord advised him that the rental premises needed repairs, and an agreement was made that the tenant would move in but would not pay any rent, and would make some repairs to the premises every month. The tenant prepared an agreement that had both names on it, and which stated that the tenancy was a two year lease and that the rent was \$1,000.00 per month. The landlord also signed an "Intent to Rent" form. The tenant has a video of all the work he has done to improve the premises. The tenant believes the landlord has dementia or Alzheimer's.

The landlord and his daughter testified as follows:

The tenant moved in about 4 months ago. No tenancy agreement was ever signed with this tenant. He has never paid any rent. He has incurred a large hydro bill. He has many other people also residing at the premises. A 10 day Notice to End Tenancy was posted on the tenant's door on March 3, 2016. The tenant filed a dispute of the Notice, but has paid no rent, and he continues to reside at the premises. The landlord is elderly and hard of hearing, but does not have dementia or Alzheimer's disease. No agreement was ever made that the tenant could do work at the premises in exchange for paying rent. The tenant has no right to remain in the premises.

Analysis

The quality of portions of evidence in this claim is poor and I have credibility or reliability concerns as to aspects of the testimony of each of the tenant, the landlord, and the landlord's daughter. With respect to the tenant, the reliability of his testimony is weakened considerably by his failure to have provided into evidence a copy of the

alleged written agreement that permits him to live in the premises and not pay rent but rather to do some unspecified amount of work. Given that the tenant is asserting that he does not have to pay any rent, I would have expected that any and all available evidence to that effect would have been provided, and I draw an adverse inference from the failure of the tenant to provide any supporting evidence for his verbal testimony, or his claim that he has a written agreement to make repairs in exchange for rent. The tenant's testimony is also weakened by his submission that the landlord signed an "Intent to Rent" form. If in fact such a form was signed, it would suggest that the landlord expected rent to be paid by the ministry, as opposed to him having agreed in writing that the tenant could make repairs rather than pay rent. Finally, the tenant submits that the landlord suffers from dementia or Alzheimer's, but if I were to accept that testimony as reliable, it would suggest that the landlord may not have had sufficient mental capacity to sign any agreement in the first place.

In some respects, the landlord's testimony was credible. He strongly asserted, for example, that he never agreed that the tenant could reside in the premises and not pay any rent, and I accept this to be his genuine belief. However, he was vague and contradictory as to detail about the period of time when the tenant took possession, asserting firstly that the tenant simply had broken in and started living there, but later acknowledging there had been a meeting and discussions with the tenant about a tenancy, and that he had agreed to think about making an agreement with the tenant. Given his age, it is understandable that he might not recall every detail as to what occurred, or remember whether or not he signed any forms presented to him by the tenant, such as an Intent to Rent form or some other form of document. I also note that the Residential Tenancy Regulation requires that a landlord prepare a typed tenancy agreement that clearly sets out details about the tenancy, including the names of the parties, the actual premises being rented, the rent payable, and so on. That was not done in this case, and I was provided with little evidence that the landlord appreciates his full responsibilities as a landlord in respect of any tenancy.

The landlord's daughter testified that her father never signed any documents at all with this tenant, but her testimony is based entirely upon what her father has told her, as she was not present at any initial meetings as between the landlord and tenant. As such, I attach little weight to her testimony, given its hearsay nature.

Importantly, the Residential Tenancy Regulation incorporates standard terms into every tenancy. The Regulation and these terms contemplate that any unconscionable term of an agreement is not enforceable (see for example, paragraph 2 of the Schedule to the Regulation). An unconscionable term is one that is oppressive or grossly unfair to one party. In this regard, if I accept the tenant's testimony that he had prepared a written agreement for the landlord to sign, which included a provision that no rent would be paid for a two year term, as long as the tenant had done some unspecified amount of repair work, I consider any such provisions to be unconscionable. They are oppressive and grossly unfair to the landlord, as they incorporate no means of correlating the work allegedly done to the amount of rent agreed upon (\$1,000.00 per month), no means of enforcing the agreement by the landlord, and would unfairly bind that landlord to this

obligation for an unreasonable two year duration. The agreement as presented by the tenant suggests that the tenant alone could determine what repair to do, the extent of such repair, and the cost or absence of cost of such repair. There is no room in this type of provision for any meeting of the minds of the parties. I do not find that the landlord understood or consented to a provision of this kind. Accordingly, to the extent that any tenancy agreement prepared by the tenant requires work to be done by the tenant in lieu of rent, or permits work to be done in lieu of rent at the tenant's option, any such provisions of such agreement are unenforceable.

I accept the testimony of the tenant that rent is \$1,000.00 per month. I accept the landlord's testimony that no rent has been paid. Upon receipt of the landlord's 10 Day Notice, the tenant should have paid the outstanding rent, or should have vacated the premises. The tenant has done neither, and has provided no basis upon which the Notice should be cancelled. This tenancy has therefore ended pursuant to the 10 Day Notice, and as a result of failure by the tenant to pay the required rent. Section 55 (1) of the Residential Tenancy Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. I find those conditions are met, and accordingly an Order of Possession is granted to the landlord, effective 48 hours following service of such order upon the tenant.

Conclusion

The tenant's claim to cancel the 10 Day Notice is dismissed. I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

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, 2016

Residential Tenancy Branch