



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on June 7, 2016 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”). The Tenant also applied for more time to cancel the Notice.

The Landlord, the Co-Landlord, the Tenant, and the Tenant’s agent appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Issues

The Co-Landlord confirmed personal receipt of the Tenant’s Application and written evidence. However, the Tenant denied that he had received the Landlord’s documentary evidence prior to the hearing because it had been provided at the “last minute” and the Landlord knew that the Tenant was out of town working.

The Co-Landlord testified that the documentary evidence was served to the Tenant by posting it to the door with the witness on July 5, 2016 which was within the seven day time period stipulated by the *Residential Tenancy Branch Rules of Procedure* (the “Rules”). However, I determined that the Landlord had failed to allow for the three day time limit provided by Section 90(c) of the *Residential Tenancy Act* (the “Act”) which states that a document posted to the door is deemed to have been received three days later. Therefore, pursuant to Rule 3.5 of the Rules, I was not satisfied the Landlord had served the Tenant with the documentary evidence they provided for this hearing in a timely fashion. As a result, I declined to consider the Landlord’s documentary evidence but allowed the Landlords to provide oral testimony of that evidence during the hearing.

At the start of the hearing, the parties confirmed that the Tenant's agent received the Notice on June 4, 2016 by personal service. The Tenant's agent made the Application to dispute the Notice on behalf of the Tenant on June 7, 2016. Therefore, I determined that the Tenant's agent had made the Application within the five day time limit provided by Section 46(4) (b) of the Act. As a result, I dismissed the Tenant's Application for more time to cancel the Notice as the Application was made within the correct time limit.

Issue(s) to be Decided

Has the Tenant established that the Notice ought to be cancelled?

Background & Evidence

The parties agreed that this tenancy started with the previous landlord on October 1, 2015. The Co-Landlord testified that they took over the tenancy in February 2016 and were provided with a signed tenancy agreement between the Tenant and the previous landlord. The Co-Landlord testified that the rent payable for this tenancy is \$650.00 and that the agreement requires this to be paid by the Tenant on the first day of each month.

The Tenant confirmed the written tenancy agreement and that the rent was payable on the first of each month. The Tenant also paid the previous landlord a security deposit of \$300.00 before the tenancy started.

The Co-Landlord testified that the Tenant was habitually late paying rent and that for May 2016 the Tenant failed to pay \$150.00 for rent and did not pay any rent for June 2016. As a result, the Co-Landlord served the Tenant's agent with the Notice. The Notice is dated June 3, 2016 and shows a vacancy date of June 13, 2016 due to \$800.00 in unpaid rent due on June 1, 2016.

The Co-Landlord testified that the Tenant paid the full amount of the rental arrears on June 10, 2016 and has also paid July 2016 rent late on July 8, 2016. The Landlord testified that the Tenant paid this in cash and was issued rent receipts. The Co-Landlord testified that the rent receipts did not state that the money was being accepted for use and occupancy only. These receipts were also not provided into evidence prior to the hearing.

The Landlord submitted that the tenancy should end because the Tenant has been repeatedly late paying rent. The Landlord confirmed that the Tenant had not been served with a notice to end tenancy for repeatedly late payment of rent.

The Tenant agreed with the payments he had made after the Application was made as testified to by the Landlord. The Tenant's agent testified that the Landlord had not informed them that their tenancy was being ended under the Notice but because they were repeatedly late paying rent. The Tenant testified that he was struggling to make rent payments on time because he was a long distant truck driver which made it difficult to access banks on the day rent is payable and that his rent cheques do not clear for the first day of each month.

The parties provided submissions in relation to late payment of rent in this tenancy during the hearing. However, the parties were informed that as this matter was not before me, I was not able to make any legal findings on this issue.

Analysis

Section 26 of the Act requires a tenant to pay rent whether or not the landlord complies with the Act unless the tenant has a right to deduct or withhold rent. In this case, I am only at liberty to deal with the Notice and I am barred from making any legal findings on the parties' submissions regarding repeatedly late payment of rent; that matter can only be dealt with through the service of the applicable notice to end tenancy.

In this case, I accept that an agent of the Tenant was served with the Notice on June 4, 2016. The Notice complied with the requirements of the Act. The Landlord confirmed that the Tenant paid the outstanding rent on the Notice on June 10, 2016, this being a day outside of the five day time limit the Tenant had to pay rent.

However, the Landlord accepted the rent without giving any indication to the Tenant that it was being accepted for use and occupancy only. There is also not sufficient evidence before me that the Landlord informed or put the Tenant on notice that the tenancy was still being ended under the Notice. What the evidence before me indicates is that the Landlord is seeking to end the tenancy because the Tenant has been repeatedly late paying rent. In this respect, the Landlord must serve the Tenant with the appropriate notice to end tenancy for that reason.

Conclusion

Based on the foregoing, I am only able to conclude on the evidence before me that the Tenant is not in any rental arrears and that the tenancy has been re-instated by the acceptance of the rent payments. Therefore, I grant the Tenant's Application to cancel the Notice dated June 3, 2016. The tenancy will continue until it is ended in accordance with the Act.

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 13, 2016

Residential Tenancy Branch