



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Denwood Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, PSF, RP, O

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; compelling the landlord to make repairs; compelling the landlord to provide services or facilities required by law or the tenancy agreement; and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared.

The tenants had named the landlord personally as the respondent. The landlord pointed out that it was his company who was the landlord and therefore, the party who should be named as the respondent. On the notice to end tenancy which was the subject of this proceeding the company is indeed named as the landlord. With the consent of all parties, the name of the respondent is changed to that of the company. That amendment is reflected in the style of cause.

The landlord had filed written evidence but had not served a copy of it on the tenants. As a result, it could not be admitted into evidence.

At the beginning of the hearing the tenants agreed that the most important issue was whether the tenancy would continue or not. Accordingly, I dismissed their application for all orders, except the request to set aside the notice to end tenancy, with leave to re-apply pursuant to Rules 2.3 and 6.2.

Issue(s) to be Decided

Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated August 5, 2016 valid?

Background and Evidence

The rental unit is a three bedroom house. For many years the landlord has rented the house to three separate tenants. Each tenant received social assistance. The paper

work for each agreement consisted of a completed Intent to Rent form. Each paid a monthly rent equivalent to their monthly housing allowance - \$375.00 – which was deposited directly into the landlord's bank account by the Ministry. The tenants were responsible for all utilities.

This arrangement changed in 2014 and 2015. JH, who has been a resident since December 2010, started receiving some benefits from CPP, as well as continuing to receive some benefits from the province. His provincial benefits were now paid to him instead of to the landlord. There were some glitches in this transition but both the landlord and JH testified that eventually he caught up on his rent.

DO moved into the house in July 2014. He and the landlord signed an Intent to Rent form but the \$375.00 monthly rent was paid to DO, not to the landlord. In 2015 DO had trouble paying the rent.

A third tenant, who was also a long term tenant, died in 2015. DM is a friend of JH and the two arranged to have DM move into the house with JH and DO. Someone, the evidence was varied as to who, gave DM an Intent to Rent form which he signed. This also was for a monthly rent of \$375.00 plus utilities. It appears that at first the rent was paid directly to the landlord; later it was paid to DM.

Starting in 2015 payment of the rent became complicated. It was no longer a case of three separate cheques, each for \$375.00, being automatically deposited into the landlord's bank account. Some money was deposited by government sources into the company account; and various amounts of cash were deposited at various times during the month by the tenants into the landlord's personal account. The landlord's only record of the payments was the bank statements received a month after the fact. Of course, the bank statement only shows a deposit; not who paid it. According to the landlord, the end result is that it is not clear who paid what between February 2015 and November 2015.

In November of 2015 the landlord and the three tenants met. They agreed that the rent would be \$900.00 per month; that JH would be responsible for the collection and payment of the rent from the other two tenants; and that only one deposit would be made monthly. All parties testified that since this agreement has been made there have been no problems with the payment of the rent. JH collects \$300.00 from each of the other two tenants and deposits \$900.00 into the landlord's bank account every month.

The issue is that there is unpaid rent owed for the period prior to the November 2015 agreement. The landlord is of the opinion that only DO actually owes him money. DO

agrees that he does owe the landlord some arrears. The problem is that there is no agreement on the amount owed and the two parties' estimates of the arrears, and that's all they are - estimates - differ widely.

In February or March the landlord and the tenants met twice to try to resolve the question of the arrears. The landlord's position is that it is up to the tenants to provide all the receipts and prove the payments they made. DO testified that he gave the landlord all his receipts at those meeting. He also gave the landlord his accounting of the rent paid and a re-payment schedule. The landlord did not give any indication that he accepted the tenant's accounting. DO says the landlord took the documents and said he would think about it. DO said he did not keep a copy of these papers.

The landlord testified that DO did give him some bits of paper but he was not able to reconcile those papers with his records.

In March 2015 the landlord served DO only with a 10 Day Notice to End Tenancy for Non-Payment of Rent. He did not take any steps to enforce the notice because it was too much work to file for an order of possession. Another 10 Day Notice to End Tenancy for Non-Payment of Rent was served in April 2016. Once again, there was no follow-up by the landlord.

On August 5, 2016 the landlord issued a served a 10 Day Notice to End Tenancy for Non-Payment of Rent. This time all three tenants were named on the notice. The arrears were expressed as follows:

"You have failed to pay rent in the amount of \$1125.00 and past rent that was due on May 1, 2016 and during 2015 and 2016. There is a substantial amount of rent owing from 2015 and 2016. This amount must be determined accurately & paid. It must be paid within 5 days of this. This amount could be as much as \$2000. (At this point my claim is \$1200.00.)

The tenants filed this application disputing the notice.

Analysis

The *Residential Tenancy Act* allows a landlord to end a tenancy when a tenant does not pay the rent when due. The procedure is set out in section 47. The first step is to serve the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent in the prescribed form.

Subsection 47(4)(a) provides that if a tenant pays the overdue rent within 5 days of receiving the notice, it has no effect. It is for that reason that the arrears claimed by a landlord on the notice must be for an exact amount. A tenant cannot comply with subsection 47(4)(a) if the arrears are expressed as an approximate amount or an estimated amount.

If a tenant thinks that the amount of arrears claimed by a landlord on a 10 Day Notice to End Tenancy is inaccurate, they may file an application disputing the notice within 5 days of receiving it. In the dispute resolution proceeding the onus is on the landlord to prove the arrears owed, on a balance of probabilities.

The 10 Day Notice to End Tenancy for Non-Payment of Rent dated August 5, 2016 must be set aside because:

- The arrears are not set out with any specificity; and,
- In the hearing the landlord was not able to prove, on a balance of probabilities, the amount of the arrears owed.

The tenants amended their application for dispute resolution by making reference to a 10 Day Notice to End Tenancy for Non-Payment of Rent dated September 2, 2016. No one file a copy of that notice and no evidence regarding that notice was given. However, if the wording on the September notice is the same as the August notice, the same reasoning will apply and it will be unenforceable.

There was no application by the landlord for a monetary order for arrears of rent and no determination was made on that issue. The landlord may file a claim against one or all of the tenants for a monetary order. At the hearing, the onus will be on the applicant (in this case the landlord) to prove his claim on a balance of probabilities.

Conclusion

For the reasons set out above the 10 Day Notice to End Tenancy for Non-Payment of Rent is set aside and is of no force or effect. The tenancy continued until ended in accordance with the *Residential Tenancy Act*. As the tenants did not pay a fee to file this application, no further order is required.

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 04, 2016

Residential Tenancy Branch

