Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant for "Other" issues and, to recover the filing fee from the Landlords for the cost of making the Application. In the details of the dispute section of the Application, the Tenant wrote that she is disputing the fact that she never received the notice to end tenancy in writing.

Preliminary Issues and Findings

The Tenant and her witness appeared for the hearing at the scheduled time of 9:00 a.m. However, there was no appearance during the 20 minute duration of the hearing for the named Landlords. The Tenant consented to allow Residential Tenancy Branch staff members to dial into the hearing and listen to the proceedings for training purposes only. After the hearing was conducted and concluded, the Tenant and her witness dialed out of the hearing. However, I remained on the line to conduct a debrief of the hearing with the training staff members.

It was during this time that the female Landlord dialed into the hearing and explained that she was under the impression that the hearing was to take place at 10:00 a.m. and apologised for her mistake. However, as the hearing had concluded and the Tenant had dialed out of the hearing, I was unable to hear or consider the female Landlord's evidence she was attempting and wanted to provide. I informed the female Landlord that I will be writing to both parties detailing the evidence provided and the outcome of the hearing. This is provided as follows.

The Tenant testified that she served the Landlords with a copy of her Application and the Notice of Hearing documents by registered mail to the Landlords on September 27, 2016. As the Landlord did dial into the conference call hearing after it had been concluded and explained that she was aware of the hearing, I am satisfied the Tenant

served the Landlord with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

The Tenant testified that this oral tenancy started ten years ago and currently she pays rent to the Landlord in the amount of $500.00 on the first day of each month. The Tenant testified that in September 2016 she received a multitude of text messages and phone calls from the Landlord stating that the Tenant had parked a camper van in the driveway which was getting in the way of the Landlord's guests and other occupants. The Tenant provided the text messages into evidence for this hearing.

The Tenant testified that while she was threatened with eviction by the Landlord she did not receive any written notice and she also disputes the reason the Landlord threatened her with for eviction. The Tenant's witness confirmed that he was staying with the Tenant for a period of two weeks in September 2016 during which time he did not see any eviction notice being served to the rental unit. The Tenant testified that she has not received any written or legal notice from the Landlord to end the tenancy.

I asked the Tenant what relief she was seeking in her Application if she had not been served with a legal valid notice to end her tenancy. The Tenant replied that when she contacted the Residential Tenancy Branch Information line and told them that the Landlord had threatened her with an eviction notice, the Tenant was told to make the Application to cover her basis.

In relation to the Tenant's Application, I find that the Tenant has not requested any relief which I am able to provide to her. In addition, I am unable to cancel a notice to end tenancy if it has not been served to the Tenant and is not before me in this hearing. Therefore, I am only able to conclude that there are no legal findings for me to make on the Tenant's Application.

However, I caution the parties that Part 4, Division 1 of the Act explains how a tenancy should end. One of the ways a landlord may end a tenancy is by serving the tenant with a written legal notice to end the tenancy; that notice to end tenancy must be on the approved form, the contents of which must comply with the Act.

I also caution the parties that if a landlord serves a tenant with a notice to end tenancy, the landlord bears the burden to prove the notice to end tenancy has been served. If this cannot be satisfactorily proved or the landlord does not retain evidence of service, then a landlord should re-serve the notice to end tenancy ensuring they retain evidence and proof of service if this becomes an issue in a future dispute resolution proceeding.

As there is no evidence before me that the Tenant has been served with a legal valid notice to end tenancy that complies with the Act, and I have made no legal findings on the Tenant's Application, the Landlord should not be held responsible for paying the Tenant's filing fee. Therefore, I deny the Tenant the recovery of her filing fee and the Tenant's Application is dismissed. This file is now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 18, 2016

Residential Tenancy Branch