



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities and to cancel a Two Month Notice to End Tenancy for landlord's use of the property.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on December 19, 2016. Canada Post tracking numbers were provided by the tenant in documentary evidence. The tenant testified that the landlord did not pick up her registered mail; however, the landlord is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the 10 Day Notice to End Tenancy?

- Is the tenant entitled to an Order cancelling the Two Month Notice to End Tenancy?

Background and Evidence

The tenant testified that this tenancy started on April 01, 2010 with a different landlord. They had a verbal agreement for the tenant to rent this unit on a month to month basis. Rent is currently \$1,040.00 per month due on the 1st of each month.

The tenant testified that in September, 2015 this person (the landlord) appeared and told the tenant she was the caretaker for the landlord. The tenant asked her to provide documents to show that she had assumed responsibility for the tenancy as the landlord's representative or that she had some other interest in the tenancy. The landlord did not provide any documentation to the tenant concerning her interest. In February, 2016 this landlord called to inform the tenant that her original landlord had passed away. This landlord was supposed to provide the tenant with the name and address of the original landlord's lawyer dealing with his estate so the tenant could confirm who her landlord currently was. This landlord did not provide those details to the tenant and although the tenant has been sending her rent cheques to this landlord she does not know if she is now the true landlord for this tenancy or the executor of the deceased landlord's estate or if she has some other interest in the rental unit.

The tenant testified that she paid her rent by cheque for December, 2016 and this was sent to this landlord by registered mail. The landlord did not collect that mail and proceeded to serve the tenant with a 10 Day Notice to End Tenancy. This was served upon the tenant on December 14, 2016 by posting it to the tenant's door. The tenant testified that the 10 Day Notice states the tenant owes rent of \$1,060.00 when in fact the rent is only \$1,040 and this amount was sent to the landlord prior to this Notice being issued. The tenant testified that therefore the Notice should be deemed null in void and the tenant seeks an Order to cancel this Notice.

The tenant testified that the landlord also served the tenant with a Two Month Notice to End Tenancy . This Notice was served by posting it to the tenant's door on December 03, 2016. The Notice states that the rental unit will be occupied by the landlord; the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant testified that as she no longer knows who the landlord is for this unit or if this person is the landlord's spouse then the Notice should also be cancelled until the landlord provides proof that she is now the legal landlord for this rental unit.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

A tenant is required under s. 26 of the *Act* to pay rent on the day it is due. I am satisfied from the evidence before me that the tenant did send the rent cheque by registered mail to the landlord on November 28, 2016. Therefore at the time the 10 Day Notice was issued and served upon the tenant on December 14, 2016 there was no outstanding rent. A landlord cannot avoid registered mail delivery of rent cheques in an attempt to serve a tenant a 10 Day Notice to End Tenancy for unpaid rent. Consequently, I find the tenant met her obligation to provide the rent to the landlord and therefore the 10 Day Notice is deemed to be null in void and is hereby cancelled.

With regard to the Two Month Notice to End Tenancy, I Am satisfied from the evidence before me that the tenant requested information regarding the legal owner or landlord of this rental unit and the person who served the Notice did not provide that information. The tenant is therefore not able to make a decision as to the validity of the Two Month Notice without confirmation about who the landlord or the landlord's spouse is. As the landlord did not attend the hearing to provide sworn testimony or any other evidence then as the landlord has the burden of proof in this matter to show that the reason

provided on the Two Month Notice is a valid reason to end the tenancy; I find the Notice will hereby be cancelled.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy dated December 11, 2016 and the Two Month Notice to End Tenancy dated December 01, 2016 are both cancelled and the tenancy will continue until legally ended.

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: January 18, 2017

Residential Tenancy Branch