



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 25 SULLIVIAN DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT

Introduction

This teleconference hearing was scheduled in response to an Application from the Tenant under the *Residential Tenancy Act* (the “Act”) to request more time to dispute a notice and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The Tenant was present for the duration of the hearing, as was one agent for the Landlord. A second agent for the Landlord joined the hearing approximately 25 minutes after it had begun.

The Tenant confirmed that he served the Notice of Dispute Resolution as well as his evidence to the Landlord. An agent for the Landlord (the “Landlord”) confirmed that they received the Notice of Dispute Resolution as well as the package of the Tenant’s evidence. The Landlord did not submit any evidentiary material prior to the hearing. Both parties were given the opportunity to provide affirmed testimony, present evidence and ask questions of the other party throughout the duration of the approximately 70 minute hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Tenant be granted more time to dispute the 10 Day Notice?

Should the 10 Day Notice be set aside?

Preliminary Matters

The Tenant provided evidence and testimony relating to the request for more time to dispute the two 10 Day Notices that he received. The 10 Day Notices were signed on February 15, 2018 and placed in the mail box of each of the rental units on the same day. As per Section 90 of the *Act*, a notice is deemed served three days after being put in the mail box, deeming service of both 10 Day Notices on February

18, 2018. As per Section 46(4) of the *Act*, a Tenant has five days to dispute a 10 Day Notice or to pay the rent owing.

The Tenant submitted that he applied to the Residential Tenancy Branch for Dispute Resolution on February 20, 2018, and thought that the application was accepted as complete. He was not aware that the application was not completed until he received an email from the Branch on February 27, 2018 informing him of this.

As the Tenant acted in a diligent manner, resolved this issue with his application on the same day that he received the email, and the form that was not deemed completed by the online application system was initially signed on February 19, 2018, I find that the Tenant did attempt to dispute the 10 Day Notices within the five day timeframe. The request for more time is granted and the dispute to cancel the 10 Day Notices will be considered within this Decision.

Background and Evidence

In accordance with rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the 10 Day Notices that are the subject of this dispute were requested as they are essential to the matter at hand and were not submitted in evidence by either party. Both of the 10 Day Notices that are in dispute were sent in by fax during the hearing by the Landlord.

In reviewing the 10 Day Notices, I note that each lists the same Tenant, with a separate rental unit address on each. The addresses of each of the rental units are listed on the front page of this Decision and will be noted as Address 1 and Address 2 in this Decision. The 10 Day Notice for Address 1 lists unpaid rent in the amount of \$19,000.00 and the 10 Day Notice for Address 2 lists unpaid rent in the amount of \$28,500.00.

Section 64(3) of the *Act* allows an application for dispute resolution to be amended. As it became clear during the hearing that there are two 10 Day Notices in dispute regarding two separate rental unit addresses, I amended the application to show these two addresses separately, instead of having them combined into one address as they were initially listed on the application.

The Tenant provided testimony that he lives at Address 1 and has never resided in the rental unit at Address 2. The Tenant moved into the rental unit at Address 1 in 2002 and testified that he did not pay rent at that time as he had an agreement with the previous landlord that no rent would be paid in exchange for taking care of the property. In the summer of 2016, the current Landlord acquired the properties where both rental units are located from the previous owner/landlord.

The Tenant testified that he sometimes parks his car at Address 2 as he is worried about the home being empty as he says it is constantly broken into. He stated that as the unit is currently empty, he checks on the place, collects mail and parks there to discourage intruders. Although he does not remember what day he received the 10 Day Notice for this unit, the Tenant testified that he received it from the mailbox where it was placed by the Landlord.

Both parties confirmed that there is no written Tenancy Agreement for either of the rental units. The Landlord testified that the rent at Address 1 is \$1,500.00 per month and the monthly rent for Address 2 is \$1,000.00. The Tenant stated that when the current Landlord took over in 2016, he began paying \$500.00

per month to the Landlord for the rental unit at Address 1, as that was the agreed upon amount. He provided post-dated cheques to the Landlord when the Landlord came to the property.

The Landlord testified that the rent for the rental unit at Address 1 has always been \$1,500.00 per month, not the \$500.00 that the Tenant paid. Both parties were in agreement that rent for the rental unit at Address 2 has not been paid since the Landlord acquired the properties in 2016. The Tenant testified that he did not pay the rent as he does not have a tenancy at this unit, while the Landlord testified that the Tenant owes the unpaid rent for this unit in the amount of \$1,000.00 per month.

Both parties were in agreement that \$500.00 per month was paid by the Tenant and accepted by the Landlord for Address 1 from June 2016 until August 2017. The Tenant testified that at the end of August 2017, he tried to give the Landlord more post-dated cheques, in the amount of \$500.00 each, but that the Landlord would not accept them.

The Tenant testified that it was at this time that the Landlord told him the house was going to be demolished and as such, there was no need to pay rent. The Tenant stated that he never received official notice of the Landlord's plans to demolish the rental unit.

The Landlord testified that they did not notify the Tenant of their plans to demolish the rental units in August 2017, but instead that the Tenant was told of these plans when the Landlord took over the properties in the summer of 2016. The Landlord submitted that they never told the Tenant that rent could be withheld due to their plans for the property.

The Landlord testified that they accepted rent in the amount of \$500.00 per month from June 2016 until August 2017 as partial payments towards the total amount of rent owing. The Landlord stated that each month during this time, the Tenant would tell the Landlord that the rest of the rent owing would be paid to the Landlord soon, but the Landlord never received any additional payments.

The Landlord testified that they stopped accepting the \$500.00 monthly payments in August 2017 because it was not enough money and the Tenant never followed through on his word to pay the additional amount of rent owing. Later in the hearing, the Landlord testified that the Tenant stopped paying rent after August 2017. The Landlord stated that they never gave permission to the Tenant to withhold rent and that they never refused rent payments as the Tenant did not attempt to pay rent after August 2017.

The Tenant testified that on November 14, 2017, he was assaulted by people that were sent by the Landlord and that a police report resulted in no direct contact permitted between himself and the Landlord. The Tenant submitted that he did not know how to pay rent after his post-dated cheques were no longer accepted and with no contact allowed between himself and the Landlord.

The Landlord testified that the Tenant knows where the Landlord's office is and could have gone to the office to pay the rent owing.

The Tenant confirmed during the hearing that he would like to continue residing in the rental unit at Address 1. The Landlord stated that they would like a two day Order of Possession for both units as there is significant rent owing on both places and they feel that they have given the Tenant enough time to pay the rent that is due.

Analysis

Although both parties were in agreement that there is no written Tenancy Agreement for the rental unit at Address 1, I find that an oral Tenancy Agreement was established in 2016 when monthly rent was paid for the Tenant's occupancy of the rental unit and accepted by the Landlord. In accordance with Section 12 of the *Act*, the standard terms of a Tenancy Agreement apply, regardless of the oral agreement.

The Landlord and Tenant were not in agreement regarding the Tenant occupying the rental unit at Address 2. As there was insufficient evidence to establish that the Tenant occupies this unit, that a written or oral Tenancy Agreement exists for this unit or that rent has ever been requested or paid in regard to this unit, I find that a tenancy at this unit has not been established.

As a tenancy for the rental unit of Address 2 was not established during the hearing, I find that without the existence of a tenancy, a notice to end the tenancy is not valid. Therefore, the 10 Day Notice in relation to the rental unit at Address 2 is cancelled and of no force or effect. The remainder of this Decision will refer to the 10 Day Notice regarding the rental unit at Address 1.

As the 10 Day Notice relates to a claim of unpaid rent and the parties were not in agreement on the amount of rent owing, or the reasons that rent payments stopped, I refer to the testimony and evidence of both parties to determine whether there is rent outstanding on a balance of probabilities.

The parties were in agreement that monthly rent in the amount of \$500.00 was paid by the Tenant and accepted by the Landlord between June 2016 and August 2017. Although the Landlord stated that they were accepting this rent despite it not being enough, there is insufficient evidence to show that steps were taken during this period of time to collect more rent, end the tenancy or to increase the rent in accordance with the *Residential Tenancy Act*.

Both parties agreed that rent has not been paid from September 2017 until the date of the hearing, although they are in dispute as to why rent has not been paid. Rule 6.6 of the Rules of Procedure state that when an application is made to dispute a notice to end tenancy, the onus of proof is on the Landlord to prove that the reasons for the Notice are valid.

Due to conflicting testimony as well as insufficient evidence from the Landlord, I find that the Landlord was not able to prove on a balance of probabilities that the Tenant did not attempt to continue paying rent after August 2017. As such, the Landlord has not established the validity of the 10 Day Notice based on unpaid rent, as refusing to accept rent does not constitute non-payment of rent.

Based on a lack of evidence to the contrary, I accept the Tenant's testimony that rent in the amount of \$500.00 per month was not accepted by the Landlord in the time period between September 2017 and May 2018, despite his attempts to pay rent in a manner that had previously been accepted by the Landlord.

I find that the Tenant and Landlord established a monthly rent of \$500.00 that was paid between June 2016 and August 2017. As the Landlord had insufficient evidence to prove the rent was an amount other than \$500.00, I find that this is the current amount of monthly rent due. I also find that attempts to continue paying rent in the amount of \$500.00 per month were made by the Tenant and not accepted by

the Landlord and therefore, the Tenant does not currently owe the Landlord any rent. The Landlord should inform the Tenant of when they want the Tenant to start paying the monthly rent of \$500.00 again, and then the Tenant is required to pay rent pursuant to Section 26 of the *Act*. As such, this 10 Day Notice based on unpaid rent is not valid and therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The 10 Day Notice for the rental unit at Address 2 is cancelled and is of no force or effect.

The 10 Day Notice for the rental unit at Address 1 is cancelled and is of no force or effect. The tenancy will continue until ended in accordance with the *Residential Tenancy 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: May 11, 2018

Residential Tenancy Branch