



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that in error the application sets out a claim to cancel a one month notice to end tenancy for cause when it should have been a claim to cancel a 10 day notice to end tenancy for unpaid rent. The Landlord confirms that he understood the application to be in relation to the 10 day notice for unpaid rent as no notice to end tenancy for cause was ever served. Given the understanding of the Landlord I accept that the Tenant made an error in the application and I accept that the Tenant is seeking to cancel a 10 day notice to end tenancy for unpaid rent.

The Parties confirm that the second named Tenant in the application is not named, verbally or in writing, as a Tenant in any tenancy agreement for this tenancy. Given these agreed facts I find that Tenant EE is not a tenant under a tenancy agreement and will therefore not be named in any order that may be issued as a result of this application.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: The tenancy started about 4 years ago. Rent of \$1,664.00 is payable on the first day of each month. The Tenant failed to pay July 2018 rent and on July 2, 2018 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). On July 9, 2018 the Tenant paid the full rent and the Landlord issued a receipt indicating that the monies were collected "for use and occupancy only".

The Tenant states that the Landlord had also served the Tenant with a 10 day notice for unpaid rent in June 2018 that was paid within 5 days receipt of the notice (the "June Notice"). The Tenant states that when the Landlord served the June Notice he told the Tenant it was given so that the Tenant could "speed up" his claims for other financial assistance. The Tenant states that he has been in the middle of a WCB claim and has been late paying rent because he has been waiting for this claim to be processed. The Tenant states that the Landlord is aware of the Tenant's difficulties and had told the Tenant "not to worry". The Tenant states that the Landlord agreed to accept late rent and informed the Tenant to get the July 2018 rent to the Landlord when the Tenant is able to do so. The Tenant states that the Landlord has never had a problem with late rent payments in the past and that the Landlord has only recently had a problem because he is going on a long vacation and does not want to have to deal with a move-out or that the Landlord has discovered that more rent could be obtained for the unit. The Tenant states that while he wants to move out of the unit he cannot due to his injuries.

The Landlord states that while he does not know the full details of the Tenant's issues, the Landlord did tell the Tenant that the June Notice could be used as more leverage. The Landlord states that at the end of June 2018 the Tenant informed the Landlord that rent for July 2018 would be late. The Landlord states that the Tenant was told that a notice to end tenancy would be issued if the rent was not paid on time. The Landlord states that when the Tenant informed the Landlord on July 7, 2018 that he could not pay the rent until July 9 or 10, 2018 the Landlord said "ok". The Landlord states that there was no further discussion with the Tenant on the matter. The Landlord states that the Landlord was of the belief that as long as the Tenant paid within 10 days the Tenant was entitled to stay to the end of July 2018. The Landlord states that the Tenant paid the full rent on August 1, 2018 and no receipt was given to the Tenant indicating that the monies were accepted "for use and occupancy only". The Landlord states that there was no discussion on whether the Landlord was still seeking to end the tenancy. The

Landlord states that if the Notice is not cancelled the Landlord requests an order of possession effective September 30, 2018.

Analysis

Section 46(4) of the Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. Section 66(2) of the Act provides that the 5 day time limit for a tenant to pay overdue rent may be extended where the extension is agreed to by the landlord. While it may be that after receiving the rent for July 2018 the Landlord changed its mind, based on the Tenant's evidence that the Landlord agreed to accept late rent for July 2018 and considering the Landlord's evidence that on July 7, 2018 the Landlord said "ok" to the Tenant paying the rent on the July 9th or 10th with no further discussion, I find on a balance of probabilities that on July 7, 2018 the Landlord agreed to extend the 5 day time limit to at least July 9, 2018. As the Tenant paid the rent on July 9, 2018 I find that the Notice no longer had any effect. As the Notice was not effective to end the tenancy no cancellation is required and the tenancy continues.

Conclusion

The Notice is of no effect and the tenancy continues.

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: August 16, 2018

Residential Tenancy Branch