



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes **CNR-MT**

Introduction

This hearing dealt with the Tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Tenant's Attorney, who is the son of the Tenant, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant's Attorney and I were the only ones who had called into this teleconference. The Tenant's Attorney was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant's Attorney that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant's Attorney testified that he was not recording this dispute resolution hearing.

The Tenant's Attorney was told that the 10 Day Notice was personally served on November 26, 2021. The Tenant's Attorney did not provide further information of this service, rather he provided information on service for another 10 Day Notice issued by the Landlord on January 7, 2022. The 10 Day Notice uploaded is the notice dated January 7, 2022. I find that the Tenant was sufficiently served with the 10 Day Notice on November 26, 2021, in accordance with Section 71(2)(b) of the Act.

The Tenant's Attorney testified and presented evidence that his mother was unaware of the rental arrears for the rental unit, as she always paid her rent on time. The Tenant's roommate was less diligent in paying her rent. The Attorney stated that the Landlord did not advise his mother or make her aware there was an outstanding 10 Day Notice issued. The Tenant applied for dispute resolution when she became aware of the 10 Day Notice. The Tenant requested more time to apply for dispute resolution. Residential Tenancy Policy Guideline #36 discusses how an arbitrator may extend or modify a time limit established by the Act only in exceptional circumstances. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy. The effective date of the 10 Day Notice would have been, the earliest, December 6, 2021. Given the circumstances of communication among the other Tenant and the Landlord, I find the Tenant did not willfully fail to comply with the relevant time limit to apply for dispute resolution. I find these circumstances exceptional and unfortunate. The Tenant diligently applied for dispute resolution, albeit late once she was made aware of the 10 Day Notice. I grant the Tenant an extension up to December 6, 2021 pursuant to Section 66(1) of the Act to apply for dispute resolution as she was impacted by exceptional circumstances.

The Tenant's Notice of Dispute Resolution Proceeding package for this hearing was issued by the RTB on December 6, 2021 (the "NoDRP package"). The Tenant's Attorney confirmed that the Landlord was personally served with the Notice of Dispute Resolution Proceeding package for this hearing; however, he was not sure of the date, and whether the Tenant's evidence was provided in the NoDRP package. I find that the Landlord was sufficiently served with the NoDRP package on December 9, 2021, in accordance with Section 71(2)(b) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to more time to apply to dispute the 10 Day Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant's Attorney testified that this tenancy began as a fixed term tenancy on February 1, 2021. The fixed term ended on January 31, 2022 and now runs month-to-month. Monthly rent is \$2,295.00 payable on the first day of each month. A security deposit of \$1,147.50 was collected at the start of the tenancy.

The Attorney said they are not fighting the eviction notice, rather they are concerned with what is owing to the Landlord. The Attorney said that his mother paid her rent, but her roommate issued non-sufficient fund cheques to the Landlord. The Tenant's Attorney said that his mother is working with a centre looking for alternative housing for the Tenant.

There is a hearing set in April 2022 originating with service of the 10 Day Notice served on January 7, 2022. The file number is noted on the cover page of this decision.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord did not attend this hearing, so the hearing was conducted pursuant to Rules of Procedure **7.3 - Consequences of not attending the hearing** which states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Landlord did not attend this hearing to provide evidence on why they need this tenancy to end, or what amount of money is outstanding to the Landlord. The Tenant is actively looking for alternative housing. Due to the non-appearance of the Landlord and the lack of evidence from them, I find that they have not proven on a balance of

probabilities that this tenancy needs to end, accordingly, I cancel the Landlord's 10 Day Notice. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

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: February 28, 2022

Residential Tenancy Branch