



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities dated January 21, 2011, for an Order that the Landlord comply with the Act or tenancy agreement and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant claimed that he had not received the Landlord's evidence package. The Landlord's agent said she sent the evidence package to the Tenant on February 7, 2011 by registered mail. The Tenant then admitted that he had received a notification card about the mail but had only just picked up the evidence package prior to the hearing and he sought an adjournment so that he could review it. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. RTB Rule of Procedure 4.1 says that a Respondent's evidence must be served on an Applicant at least 5 days before the dispute resolution hearing. I find that the Tenant was properly served with the Landlord's evidence package and he cannot rely on his own failure to pick it up in a timely manner as a reason for adjourning this hearing. Consequently, the Tenant's application for an adjournment was dismissed.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Has the Landlord failed to comply with the Act or tenancy agreement with respect to collecting financial information from the Tenant in order to conduct rent reviews?

Background and Evidence

This tenancy started on February 1, 2008. Rent is due in advance on the 1st day of each month. Economic rent is \$414.00 per month. Clause 8 of the Parties' written tenancy agreement says that if the Tenant is eligible for a rent subsidy, his portion of the rent is based on a percentage of his income which is determined on an annual rent review. This clause also provides that if the Tenant fails to provide proof of income the Tenant will not be eligible for a rent subsidy. This clause further provides that the

Landlord may re-assess the rent payable by the Tenant *at any time* if the number of adult occupants in the rental unit changes.

In 2009, the Tenant's portion of the rent was \$292.00 per month. From January 1, to September, 2010 the Tenant paid rent of \$286.00 per month. However the Landlord's agent claimed that this amount was based on an incorrectly completed Rent Subsidy application. In particular, the Landlord's agent said she had to rely on the Tenant's WCB and CPP income information from 2008 because he did not provide her with updated information. The originally completed form also appears to have omitted an amount for employment income. The Landlord's agent said BC Housing demanded this information in December 2009, she made 2 written requests to the Tenant in July and August, 2010 for updated information and she finally received it from the Tenant in August of 2010.

As a result of this updated information, the Landlord's agent said the Tenant's rent was recalculated to \$306.00 per month. The Tenant was charged retroactively for the rent difference for January to September 2010 in the amount of \$513.00. The Landlord's agent advised the Tenant of this in a letter dated October 1, 2010 and she also acknowledged in that letter that the Tenant had paid \$180.00 and she offered him the opportunity to make payment arrangements to pay the balance of \$333.00. The Tenant responded in a hand written note that he hoped to pay this amount before December 1, 2010. The Landlord's agent claims that the Tenant has not paid this amount and made no arrangements with her.

The Landlord said she then put a notice in the Tenant's mail box on November 1, 2010 advising him to attend an appointment on November 30, 2010 to conduct a rent review for 2011. The Landlord said the Tenant did not attend this meeting so she gave him a letter dated December 1, 2010 advising him to submit his income information to her by December 8, 2010 which she said he did not do. Consequently, on December 31, 2010, the Landlord sent the Tenant a letter advising him that his rent subsidy would be revoked effective January 1, 2011 because he failed to provide the requested income information. The Landlord said the Tenant has still not submitted his most current income information. On January 21, 2011, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting a copy of it on the rental unit door. The Notice alleged that the amount of \$434.00 due on January 1, 2011 was unpaid. The Landlord's agent acknowledged that this amount represented the unpaid rent balance for 2010 in the amount of \$333.00 plus of \$108.00 representing the difference between the economic rent charged for January 2011 (of \$414.00) and the rent payment of \$342.00 made by the Tenant for that month.

The Tenant claimed that the Landlord advised him on 2 separate occasions in 2010 that she had made a mistake on his Rent Subsidy application and therefore she had to amend it twice. The Tenant also claimed that he participated in a rent review on October 1, 2010 with the Landlord's agent and provided her with all of his current financial information on that date. The Tenant said that the Landlord's agent also

wanted him to provide personal financial documents such as bank statements which he refused to do because he resented her insinuation that he was hiding income.

The Tenant initially said he did not receive the Landlord's notice about the November 30, 2010 rent review appointment but then admitted that he did receive it but refused to participate because he had no new information that he could provide. The Landlord's agent claimed that the Tenant did not provide her with his most current financial information and in particular said the Tenant provided her with his 2008 Income Tax information in October 2010 and not his 2009 Income Tax information which she had requested.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on January 24, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 29, 2011.

The Tenant applied for dispute resolution to cancel the 10 Day Notice on January 27, 2011 however, I find that there are no grounds to grant his application. In particular, based on the Landlord's account ledger (which was not disputed by the Tenant), I find that as of January 24, 2011 (when the Tenant was deemed to have received the 10 Day Notice) there were still rent arrears from 2010 of \$326.00 which was not paid by January 29, 2011 [or within the 5 days granted under s. 46(4) of the Act].

The Tenant argued that he would not have had rent arrears in 2010 had the Landlord not made an error on his Rent Subsidy Application. The Landlord provided a copy of a letter from her to the Tenant dated October 1, 2010 apologizing for a "calculation error." Notwithstanding this error, however, there was no evidence that the new, amended information giving rise to the increased rent was incorrect or that the Tenant's rent contribution was improperly calculated. The Tenant also argued that the Landlord was only entitled to a rent review one time per year. I find however, that there was only one rent review application completed for 2010 but due to the incomplete information submitted by the Landlord's agent to BC Housing, it had to be amended.

As a result of the foregoing, the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 21, 2011 is dismissed without leave to reapply.

The Tenant also sought an Order requiring the Landlord comply with the tenancy agreement by not conducting more than one rent review each year. As indicated above, clause 8 of the Parties' tenancy agreement states that an **annual** rent review is required to determine the Tenant's eligibility for a rent subsidy. This means that only one rent review application may be done each year **unless** the number of adult occupants in the rental unit changes. If a Tenant provides incomplete information, however, it may reasonably be within the Landlord's authority to obtain further information from the Tenant to determine his eligibility pursuant to his application for a Rent Review for that particular year. Whether the Landlord is entitled to ask the Tenant for personal banking records will depend on the reason for the request and the authority of the Landlord under its statutory scheme to make such a request. In the absence of a justifiable reason or authority to request additional records, it may not be within the Landlord's right to periodically request information unless it is for a purpose stated under clause 8 of the tenancy agreement.

However, in this case it is unnecessary for me to determine if the Landlord was justified in revoking the Tenant's rent subsidy for 2011 because he allegedly failed to provide his income information pursuant to a rent review application for that year or if the Tenant reasonably complied and the Landlord was unreasonably requesting information to which she was allegedly not entitled as I have found that there is unpaid rent to justify the 10 Day Notice [without having regard to what amount of rent was payable for January 2011].

Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 21, 2011 and his application to recover the filing fee for this proceeding are dismissed without leave to reapply. The Landlord did not request any Orders at the hearing.

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: February 17, 2011.

Residential Tenancy Branch