



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR RR RP PSF OPT OLC O LRE ERP FF

Preliminary Issues

Upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request for more time to make his application and to set aside, or cancel the Landlord's Notice to End Tenancy for unpaid rent, and I dismiss the balance of the Tenant's claim with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to request more time to make this application and to set aside, or cancel the Landlord's Notice to End Tenancy for unpaid rent, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Does this matter fall within the jurisdiction of the *Residential Tenancy Branch*?
2. Should the 10 Day Notice to end tenancy issued May 30, 2012 be set aside or cancelled?
3. If not, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord's Agents confirmed receipt of the Notice of Dispute Resolution and a copy of the Tenant's application for dispute resolution shortly after June 8, 2012. The Agent advised that they did not receive evidence from the Tenant until this morning, July 6,

2012, just prior to the hearing and have not had an opportunity to review the evidence or respond to it.

The Tenant acknowledged receiving two packages of evidence from the Landlord, the first was received a couple of weeks ago consisting of approximately 23 pages of documents including an affidavit from the Landlord's wife, e-mails between the parties, the residential tenancy agreement with the option to purchase, bank statements indicating payments returned due to insufficient funds, the March 31, 2012 rental payment of \$4,000.00, a 10 Day Notice to end tenancy for unpaid rent, and a proof of service document. The second shipment of evidence was received via e-mail yesterday, July 5, 2012 and included a copy of the affidavit from L.T., the Agent's friend who attended the rental unit with the Landlord.

The Tenant submitted that he was seeking more time to make the application so he could compile more evidence in support of his application. He then turned to the issue of jurisdiction and submitted that this matter did not fall under the *Residential Tenancy Act* as he is seeking a monetary claim of over \$25,000.00. I reminded the Tenant that we are only speaking to matters pertaining to unpaid rent and the 10 Day Notice and not his monetary claim and I asked why he felt these issues did not fall under the Act. The Tenant attempted to continue to argue his monetary claim.

The facts pertaining to the issuance and service of the 10 Day Notice were not in dispute as the Tenant confirmed being served the 10 Day Notice on June 3, 2012 and that he filed his first application within the required 5 day time frame as it was filed on June 8, 2012.

The Tenant confirmed that he has not paid the \$20,000.00 deposit to execute the option to purchase. He also confirmed that he has provided the Landlord with only one payment towards rent and asserted that this cheque dated March 31, 2012 did not clear his bank because he placed a stop payment on it on the evening of either April 3rd or April 4th, 2012. He asserts that he has had to spend over \$25,000.00 in emergency repairs to the unit and therefore the 10 Day Notice should be cancelled. He spoke briefly about required repairs to the property such as appliance repairs and readying the property for occupation as it had been vacant for some time and then spoke about a tree falling which allegedly landed on the roof causing holes through which water was coming into the house.

The Tenant argued that on April 3, 2012 a tree fell on the roof of one of the houses on the property causing extensive damage. He confirmed that he hired a restoration company on his own accord prior to any attempts to contact the Landlord or his agents.

He stated that after the restoration company arrived at the property he called the Landlord's real estate agent and shortly afterwards the Landlord's wife, her friend, and their real estate agent appeared at the property and told him to continue with the repairs.

The Agent confirmed she attended the property on this date and that when they arrived people were already at the house and appeared to be working. She noted that there was no indication of a tree or branches on the roof nor was there any indication of water inside the rental unit. She stated that they had instructed the Tenant to proceed with getting an estimate for the repairs and did not give him permission or instruction to continue with the repair.

The Agent noted that their lease agreement at section #4 states very clearly that the Tenant only has authorization to make repairs up to \$250.00, and therefore must have the Landlord's authorization for anything above that amount.

The Tenant advised that his evidence package, that was sent this morning to the *Residential Tenancy Branch*, included receipts for repairs that were conducted between April 8, 2012 and May 30, 2012. When I asked the Tenant to provide specific information pertaining to these alleged receipts he advised he did not have copies with him. I then asked which number he called the Landlord's real estate agent at and he advised he did not have access to the number during this hearing.

The Agent noted the effective date of the 10 Day Notice was June 15, 2012 and requested an Order of Possession be granted for as soon as possible.

Analysis

The Tenant filed seeking more time to make his application for dispute resolution. His initial application was filed June 8, 2012, which is within the required time frame. Therefore I find his request for more time to be moot.

The *Residential Tenancy Branch Rules of Procedure # 3.4* stipulates that the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

In this case the Tenant did not serve any of his evidence to the Landlord or to the *Residential Tenancy Branch* until today, July 6, 2012, four weeks after filing his application for dispute resolution, despite the fact most of his evidence would have been in existence prior to his filing his application on June 8, 2012. At the time of this hearing

the Tenant's evidence had not been matched to his application for dispute resolution and I proceeded to hear his testimony without the documents.

Considering evidence that has not been served on the other party evidence in according with section 3 of the *Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore, I find that the Tenant's documentary evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

The Landlord's first submission of evidence was received by both the *Residential Tenancy Branch* and the Tenant in accordance with the *Rules of Procedure* and was therefore considered in my decision. The Landlord's second submission was not received by the Tenant within the required timeframes and was therefore not considered.

Upon review of the lease agreement I find the parties entered into a fixed term tenancy agreement which began on April 1, 2012 and is scheduled to end on March 31, 2013 with rent payable on or before the 1st of each month in the amount of \$4,000.00. This agreement provides an option to purchase however I note that payments of rent are separate and have no bearing on the purchase price of the property as they do not reduce the purchase price if the option to purchase is enacted. I further note that the option to purchase does not become activated and is not exercised until such time as the Tenant provides an option deposit of \$20,000.00.

The evidence supports the Tenant has not paid anything towards the option deposit or purchase of the property, therefore I find that at this time the lease agreement is a tenancy agreement and I accept jurisdiction under the *Residential Tenancy Act*.

The person making an application for dispute resolution bears the burden to prove their claim. In this case the burden lies with the Tenant to prove the 10 Day Notice to end tenancy should be set aside or cancelled.

The Tenant alleged he put a stop payment on his March 31, 2012 rent payment and that this stop payment was done either the evening of August 3rd or the morning of August 4th, 2012. The Landlord's evidence included statements from two financial institutions which clearly indicate the March 31, 2012 cheque was deposited April 2, 2012, and the Tenant's financial institution returned the cheque the same date, April 2, 2012 due to insufficient funds. I note that these dates are a full six days prior to the 8th of April 2012 which is when a tree allegedly caused damage to the rental property and emergency

repairs were required. I further find that the other repair items which the Tenant alleged were required do not meet the definition of emergency repairs under the Act.

Based on the aforementioned I prefer the documentary evidence from the Landlord as it is supported by documents from both the Landlord's and the Tenant's financial institutions and a copy of the 10 Day Notice to end tenancy. Accordingly, I find the Tenant to be in breach of section 26 of the Act that stipulates a tenant must pay rent in accordance with the tenancy agreement.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice and I hereby dismiss the Tenant's application.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing [emphasis added].

In this case the Landlord's Agent appeared and requested an Order of Possession for as soon as possible.

Conclusion

The Landlord has been awarded an Order of Possession effective **2 days** upon service to the Tenant. This Order is legally binding and must be served upon the Tenant.

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*.

The Tenant submitted that the remainder of his claim pertains to a monetary request which exceeds the \$25,000.00 jurisdiction of the *Residential Tenancy Act*. Therefore I decline to hear matters pertaining to the Tenant's monetary request. The Tenant is at liberty to seek remedy through the appropriate court.

Dated: July 06, 2012.

Residential Tenancy Branch