



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, LAT, RR, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage or loss under the Act; an Order allowing the tenant to change the locks to the unit and to reduce rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant applied on June 4, 2012, to cancel a Notice to End Tenancy for Unpaid Rent, issued on June 2, 2012. The landlord confirmed receipt of the tenant's application on June 7, 2012, sent via registered mail. The landlord received some evidence with the application and then a 2nd evidence submission.

The tenant served 17 pages of documents to the Residential Tenancy Branch, at the time she filed her application. The tenant then submitted 2 additional evidence packages.

As the landlord was served evidence in a different form than the RTB, I determined that any evidence referenced by the tenant during the hearing, would be identified by each party, in order to ensure receipt of that evidence.

The tenant confirmed receipt of the landlord's evidence.

The tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2012 be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 7, 2012; rent was \$580.00 per month, due on the first day of each month. A deposit was not paid.

The tenant confirmed that on June 2, 2012, she received a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 15, 2012. The Notice was posted to the tenant's door. Initially the tenant stated she was at home on June 2, 2012, and when specifically asked if she received the Notice on that date, she replied that she had. However; the tenant argued that the legislation would have deemed receipt of the Notice on the 3rd day after posting.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$580.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord stated she received an \$80.00 cheque from the tenant on June 9, 2012 and a \$500.00 cheque, sent on behalf of the tenant, on June 11, 2012. The \$500.00 payment was mailed to the landlord on June 6, 2012, by a 3rd party. The landlord did not disagree that the cheque may have been in the landlord's mailbox prior to June 9, 2012.

The tenant testified that on June 8, 2012, she took a photograph of envelope in which the \$500.00 had arrived, as it was in the common mailbox. A copy of this photograph, dated June 8, 2012, was supplied as evidence. The landlord submitted deemed service should also be applied to the \$500.00 payment; therefore, the cheque would have been received on June 11, 2012.

The tenant and landlord agreed that \$80.00 was paid on June 9, 2012.

The tenant and landlord agreed that the tenant has also been issued a 1 Month Notice to End Tenancy for Cause, which has an effective date of June 30, 2012. The tenant stated she is planning on vacating the unit on June 30, 2012, but wanted to dispute the 10 Day Notice, as she had paid all rent owed for June, 2012; within 5 days of receipt of the 10 Day Notice to end Tenancy.

The landlord acknowledged that the tenant would be vacating on June 30, 2012, but no mutual agreement was reached in relation to the force of the 10 Day Notice to end Tenancy issued on June 2, 2012.

Analysis

Section 90 of the Act determines that a document that is posted to a door is deemed served on the 3rd day after posting. However; there is no dispute that the tenant actually received the 10 Day Notice to End Tenancy on June 2, 2012; when she removed it from the door.

I have rejected the tenant's submission that the deemed served provision of the Act should apply. If I accepted that argument I would also have to accept the fact that the tenant applied to dispute that Notice 1 day prior to receipt of the Notice. She applied to dispute the Notice on June 4, 2012; service on the 3rd day after posting to her door would have been June 5, 2012.

Therefore, I find that the tenant received the 10 Day Notice to end Tenancy for Unpaid Rent on June 2, 2012. The June, 2012, rent payment, in full, was then due within 5 days of June 2, 2012.

Even if I only consider the \$80.00 rent payment; it was made on June 9, 2012; 2 days after the rent payment was due, in full. Therefore, as the rent was not paid in full by June 7, 2012, I find that the tenant's application to cancel the Notice is dismissed.

The effective date of the Notice was June 15, 2012.

The landlord did not request an order of possession, and has acknowledged the tenant's intention to vacate the unit by June 30, 2012.

Conclusion

The 10 Day Notice to End Tenancy issued on June 2, 2012, is of full force and effect.

The tenant's application to cancel the Notice to end tenancy is dismissed.

The balance of the tenant's claim, outside of the filing fee, is dismissed with leave to reapply.

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: June 25, 2012.

Residential Tenancy Branch