



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The male tenant (the tenant) confirmed that the tenants received the landlord's 10 Day Notice sent by the landlord by email on January 22, 2014. However, the tenant noted that the landlord had only sent the first page of the two page Notice and also observed that the landlord's method of delivering this Notice was not one of the ways that such a Notice can be served in accordance with the *Act* (section 88). The landlord did not dispute the tenant's sworn testimony and written evidence that the landlord had failed to serve the tenant with the whole 10 Day Notice and had sent this Notice by email. While the tenant was correct in noting that the landlord did not serve all of the Notice to the tenant in a way allowed under the *Act*, I noted at the hearing that the tenant had acknowledged receiving the 10 Day Notice and had applied to cancel it in accordance with the provisions outlined in the second page of that Notice. Due to a settlement agreement reached by the parties, there was no need for me to make a determination as to whether the tenant had been served with the landlord's 10 Day Notice.

The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on January 30, 2014. In accordance with sections 89(2) and 90 of the *Act*, I find that the landlord was deemed served with the tenants' hearing package on February 4, 2014, the fifth day after its registered mailing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Should any orders be issued with respect to this tenancy?

Background and Evidence

This tenancy began on November 1, 2012, as a one-year fixed term tenancy. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent is set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$700.00 security deposit paid by November 15, 2012.

The landlord's 10 Day Notice identified \$3,526.50 as owing as of January 1, 2014. Since then, the landlord testified that he had accepted a \$3,000.00 payment from the tenants and the current balance owing from this tenancy is set at \$2,726.50. The tenant did not dispute the landlord's sworn testimony regarding the monies paid since January 22, 2014 or the amount currently owing.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues arising out of the tenants' application and currently under dispute in this tenancy under the following final and binding terms:

1. The tenants agreed to pay the landlord a sum of \$2,726.50, the amount that both parties agreed is currently outstanding for this tenancy, by May 10, 2014.
2. The landlord agreed to withdraw the 10 Day Notice, which is no longer of force nor effect.
3. Both parties agreed that all monetary issues currently under dispute and arising out of this tenancy are resolved if the tenants abide by the monetary terms of the settlement agreement as outlined above.
4. Both parties agreed this settlement agreement constituted a final and binding resolution of all issues currently under dispute arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties and as discussed at this hearing, I issue a monetary Order in the landlord's favour in the amount of \$2,726.50. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant(s) do not abide by the terms of the

above settlement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also note, as I did at the hearing, that the monetary provisions of the settlement agreement are intended to be implemented, in addition to any and all rent that becomes due during the course of this tenancy.

The landlord's 10 Day Notice is withdrawn and is of no continuing force nor effect. This 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: March 21, 2014

Residential Tenancy Branch

