



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: DRI, CNR, CNC
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”), a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), and to dispute an additional rent increase.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that he served the landlord with his application for dispute resolution and notice of hearing by placing the documents in the mail slot at the landlord’s office within a few days of filing the application on March 20, 2015.

I will address the service of the tenant’s application later in this Decision.

The hearing process was explained to the tenant and an opportunity was given to ask questions about the hearing process. Thereafter the tenant was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter-Despite having their own application for dispute resolution set for hearing on this date and time and the notice of this hearing, the landlord did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the landlord, without leave to reapply.

Preliminary matter-I have determined that the portion of the tenant's application to dispute an additional rent increase is unrelated to the primary issue of disputing the Notices. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's application and dismissed that portion, **with leave to reapply**.

Although the tenant applied for cancellation of a 1 Month Notice, that Notice was not included with his or the landlord's evidence. I therefore decline to consider that tenant's request for cancellation of a 1 Month Notice.

The hearing proceeded only upon the tenant's application to seeking to cancel a 10 Day Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notices?

Background and Evidence

Despite not being in attendance at the hearing, the landlord submitted documentary evidence in response to the tenant's application, including a written tenancy agreement showing that this tenancy began on February 1, 2013, and that the monthly rent was \$799.00 at the beginning of the hearing. At the hearing, the tenant submitted that the tenancy began in August 2012.

The tenant submitted a copy of the 10 Day Notice, which was dated March 18, 2015, for an effective end of tenancy date of March 31, 2015, and listed unpaid rent of \$1733.00 as of March 1, 2015.

At the hearing, the tenant questioned the amount of unpaid rent listed on the Notice as his rental obligation is geared to his income.

Analysis

In addressing whether or not the tenant properly served the landlord with his application for dispute resolution, section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the landlord in this case) in person, or if a landlord, by leaving a copy with an agent of the landlord, by registered mail to the address at which the person resides, or if a landlord, by registered mail to the address at which the person carries on business as a landlord.

In this case, the tenant served his application to the landlord by placing the documents in the landlord's office's mail slot.

Although this was not an acceptable method of delivery of documents for purposes of section 89(1) of the Act, I order that the delivery of the tenant's application sufficiently

served, pursuant to section 71 of the Act. I was persuaded to make this finding as the landlord filed evidence to include with and to respond to the tenant's application using his file number and as they requested that their own application be made a cross application to the tenant's.

As to the 10 Day Notice, under section 46 of the Act, a landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent if rent is unpaid on any day after the day it is due. When a landlord issues a notice to end a tenancy and the tenant files an application to dispute the notice within the required time frame, the landlord must prove and demonstrate that there is sufficient reason under the Act to end the tenancy.

As the landlord did not appear in the hearing to support their Notice, after being served with the tenant's application and notice of this hearing and having their own application set for this day and time, I order that the 10 Day Notice dated March 18, 2015, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Conclusion

The portion of the tenant's application seeking cancellation of the Notice is granted as I have cancelled the landlord's Notice, dated March 18, 2015.

The portion of the tenant's application seeking to dispute an additional rent increase was severed and dismissed, with leave to reapply.

The landlord's application is dismissed, without 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: May 4, 2015

Residential Tenancy Branch

