



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end the tenancy, and for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on June 10, 2015, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the tenant. The tenant testified that the landlord was served on that date and in that manner and has provided a copy of a Registered Domestic Customer receipt addressed to the landlord and a copy of a Canada Post cash register receipt bearing that date, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that more time should be permitted to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this month-to-month tenancy began about 2 years ago and the tenant still resides in the rental unit. Rent in the amount of \$1,150.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant further testified that the tenant has paid rent in cash to the landlord but has never been provided with receipts. The landlord travels a lot and asked the tenant via text message to deposit rent to one of the landlord's HSBC accounts, however due to the tenant's work, it's difficult to get there. About a year ago the tenant gave the landlord a year's worth of post-dated cheques, and the landlord has never tried to cash one.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 1, 2015. The tenant's child gave it to the tenant saying it had been found on the door. A copy of the notice has been provided and it is dated June 1, 2015 and contains an effective date of vacancy of June 11, 2015 for \$3,100.00 of unpaid rent that was due on June 1, 2015. The landlord has post-dated cheques, and the tenant seeks an order cancelling the notice.

Analysis

The landlord has not attended the hearing to oppose any extension of time to dispute the notice to end the tenancy given by the landlord. The tenant testified that it was posted to the door on June 1, 2015, which is deemed to have been served 3 days later, or June 4, 2015. The tenant filed the application for dispute resolution on June 8, 2015, and the *Residential Tenancy Act* states that such a dispute must be filed within 5 days. I find that the tenant has disputed the notice within the 5 days, and no further time is required.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. In this case, the tenant testified that the landlord was given post-dated cheques and the landlord has not even tried to cash one. In the absence of any evidence to the contrary, I accept the tenant's testimony and find that the landlord has failed to establish that the tenant owed \$3,100.00 as of June 1, 2015 or that the notice was issued in accordance with the *Act*.

The notice to end the tenancy is hereby cancelled.

Since the tenant has been successful with the application, the tenant is entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the tenant for that amount, and order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 1, 2015 is hereby cancelled and the tenancy continues.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: July 28, 2015

Residential Tenancy Branch

