



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 7, 2015. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent and to recover the cost of the filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided evidence that the Landlord was served notice of this application and this hearing by registered mail on October 8, 2015 and the package was returned to the Tenant marked "refused".

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant I find that the Landlord was deemed served notice of this hearing on October 13, 2015, in accordance with Sections 89(1) (c) and 90 of the Act. The hearing continued to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

1. Should the Tenant's application be amended to dispute and cancel two 10 Day Notices to end tenancy?
2. If so, should the two 10 Day Notices be cancelled or upheld?

Background and Evidence

The Tenant testified that she entered into a written tenancy agreement with the previous owners which began in August 1999. Her monthly rent as of December 1, 2015 is \$856.08 and is payable on the first of each month. The Tenant recalled having paid a security deposit to the previous owners but did not have that information available to present during this hearing.

The Tenant submitted evidence that she had provided her Landlord 12 postdated rent cheques starting December 01, 2014 and ending November 1, 2015. Then on October 2, 2015 she found a 10 Day Notice taped to her door. When she spoke with the Landlord's agent she was told they did not have her October 1, 2015 postdated cheque. She issued a replacement cheque on October 2, 2015.

The Tenant testified that on November 3, 2015 she found a second 10 Day Notice taped to her door and again when she spoke with the Landlord's Agent she was told they could not find her November 1, 2015 postdated cheque. She again issued a replacement cheque for November 2015 rent.

The Tenant stated that the Landlord's Agent told her that they preferred that she sign up for their pre-authorization plan (PAP) so the Landlord could automatically debit her bank account for rent payments. The Tenant stated that she decided to sign up for the PAP and took the papers to her bank to allow PAP effective December 1, 2015.

The Tenant asserted that when she personally delivered the completed PAP paperwork to the Landlord's office she was immediately handed her original October and November 2015 postdated cheques.

Analysis

Upon consideration of the circumstances presented to me during the hearing, I grant the Tenant's request to amend her application in order to dispute the October 2, 2015 and the November 3, 2015 10 Day Notices to end tenancy, pursuant to section 64(3)(c) of the Act.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence. I accept that the Tenant's rent had been paid in full within 5 days of receiving each 10 Day Notice. Accordingly, I grant the Tenant's application and cancel the October 2, 2015 and the November 3, 2015, 10 Day Notices to end tenancy for unpaid rent.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenant was successful with her application and the 10 Day Notices issued October 2, 2015 and November 3, 2015 were both cancelled and are no longer of any force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenant may authorize her bank to reduce her next pre-authorized rent payment (PAP) by **\$50.00** for one time, as full recovery of her filing fee "or" the Tenant may collect the \$50.00 from the Landlord by serving them with the enclosed Monetary Order. In the event that the Landlord does not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: December 09, 2015

Residential Tenancy Branch

