



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR PSF FF

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 10, 2015, for an order directing the landlord to provide services or facilities required by law, and to recover the cost of the filing fee.

The landlord, the tenant, and a tenant advocate attended the teleconference hearing. The hearing process was explained to the parties, the parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord confirmed receiving the tenant's documentary evidence and that he had the opportunity to review that evidence prior to the hearing. The tenant was deemed to have received the landlord's documentary evidence as the registered mail package was signed for an accepted according to the registered mail tracking information provided during the hearing. I find that both parties were sufficiently served with documentary evidence in accordance with the *Act* as a result.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated multiple matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice dated October 10, 2015. I find that not all the claims in this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's applications is dismissed, **with leave to re-apply**

Issues to be Decided

- Is the 10 Day Notice valid and if so, should it be cancelled or upheld under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on February 1, 2015. Monthly rent of \$1,150 is due on the first day of each month. A security deposit of \$575 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

A copy of the 10 Day Notice dated October 10, 2015 was submitted in evidence. The 10 Day Notice indicates that \$1,150 in rent was owed as of October 1, 2015. The landlord testified that the 10 Day Notice was served by registered mail on October 10, 2015. The tenant testified that she received the 10 Day Notice on October 16, 2015 the day after her son signed for the registered mail package and left it for her. The tenant disputed the 10 Day Notice on the fifth day, October 21, 2015, which is within the five days permitted under section 46 of the *Act*.

The landlord testified that the tenant paid the \$1,150 amount owed as listed on the 10 Day Notice on October 21, 2015.

The landlord testified that the tenant was deemed served with the 10 Day Notice on October 20, 2015.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(4) of the *Act* states that within 5 days after receiving a 10 Day Notice the tenant may pay the overdue amount in which case the 10 Day Notice is of no effect. In the matter before me, the unpaid rent was confirmed by the parties as being paid by the tenant on October 21, 2015. Therefore, I find the 10 Day Notice dated October 10, 2015 is of **no force or effect** as the unpaid rent was confirmed as being paid on October 21, 2015, which I find is within 5 days of the tenant having received the 10 Day Notice on October 16, 2015 indicated above.

I find that the deemed service provisions of section 90 of the *Act* do not supersede a finding of fact, and I accept the testimony of the tenant that she did not receive the 10 Day Notice until October 16, 2015. The deemed service provisions of the *Act* exist where there is no other evidence to prove to the contrary, and in the matter before me, evidence to prove contrary to the deemed service date exists.

I do not grant the tenant the recovery of the filing fee; however, as section 46(4) of the *Act* indicates that paying the overdue rent within 5 days as indicated on the 10 Day Notice results in the 10 Day Notice having no effect.

Conclusion

The 10 Day Notice dated October 10, 2015 has no effect as overdue rent as listed on the 10 Day Notice was paid within five days of the tenant receiving the 10 Day Notice.

The tenant is not granted the cost of the filing fee for the reason indicated above.

The tenancy continues until ended in accordance with the *Act*.

The 10 Day Notice dated January 18, 2014 issued by the landlord is of no force or effect. The tenant has been granted a monetary order in the amount of \$50.00 for the recovery of their filing fee.

Dated: December 16, 2015

Residential Tenancy Branch

