



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, O

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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The tenants' application does not set out any remedies sought other than cancellation of the 10 Day Notice and recovery of their filing fee.

Both tenants attended the hearing. The landlord was represented by its two agents. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The agent DH admitted service of the tenants' dispute resolution package and amendment. The agent DH had not received the tenants' evidence submitted 26 April 2016.

The tenants admitted service of the 10 Day Notice dated 12 March 2016.

Preliminary Issue – Scope of Application

The landlord issued a second 10 Day Notice in April. The landlord applied for an order of possession by way of direct request. Direct request proceedings are *ex parte* proceedings: tenants are not afforded the opportunity to appear at a hearing, provide evidence or make submissions. The landlord was successful in that application and

was issued an order of possession on 21 April 2016. This hearing does not relate to that April notice and does not affect the results of the direct request hearing.

The tenants provided an amendment. The amendment form sets out various facts, but does not seek any specific remedy. On this basis, the submitted form does not result in any substantive amendment to the tenants' application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began in November 2015. Monthly rent in the amount of \$1,500.00 was due on the first.

On 12 March 2016 the agent DM served the 10 Day Notice to the tenant MR in person. The 10 Day Notice set out that the tenants had failed to pay rent due 1 March 2016 in the amount of \$1,500.00. The parties agree that the tenants paid the outstanding rent in full on 18 March 2016.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. Pursuant to paragraph 46(5)(a) of the Act, if the tenant pays the overdue rent within five days after receiving a 10 Day Notice, that notice is of no effect.

The evidence indicates that the 10 Day Notice was served 12 March 2016. The evidence also indicates that the tenants paid their rent, in full, on 18 March 2016. As the tenants paid their rent within five days of receiving the 10 Day Notice, the 10 Day Notice is of no effect.

Although the 10 Day Notice is cancelled, it is not cancelled because the tenants were successful in showing that they had validly withheld rent, but rather by operation of paragraph 46(5)(a) of the Act. For this reason, I am exercising my discretion to decline to award the tenants recovery of their filing fee.

Conclusion

The 10 Day Notice is cancelled. The tenants' claim to recover their filing fee is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 28, 2016

Residential Tenancy Branch