



Dispute Resolution Services

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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 seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided and to give closing submissions.

During the course of the hearing the tenant testified that he had not received any evidentiary material from the landlord. The landlord testified that he posted the evidentiary material to the door of the rental unit on May 20, 2016. The tenant does not dispute the landlord's testimony but has not received the material. I accept the testimony of the landlord, and all evidence provided by the parties has been reviewed and is considered in this Decision. Neither party has provided a copy of the notice to end the tenancy.

Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began about 18 months ago and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable 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 \$475.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The tenant failed to pay rent when it was due, and on May 1, 2016 the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has not been provided by either party, but the landlord testified that it was dated May 1, 2016 and contained an effective date of vacancy of May 10, 2016. The landlord does not recall what the notice stated with respect to the reason for issuing it. The tenant has not paid any rent since the notice was served, and is now in arrears of rent the sum of \$1,500.00 for May and June, 2016.

The landlord also testified that the tenant attended at the landlord's residence with a witness and offered rent money and the landlord refused it. Then the landlord spoke with a friend who said that the landlord had to accept the rent so the landlord texted the tenant and agreed to take the rent. The tenant replied that he had 5 days to pay the rent and the landlord responded that he would look into it. Copies of the text messages have been provided.

The landlord further testified that he has also served the tenant with a 1 Month Notice to End Tenancy for Cause citing repeated late rent, but a copy of that notice has not been provided.

The landlord orally requested an Order of Possession.

The tenant testified that the security deposit paid to the landlord was \$375.00, not \$475.00.

The tenant further testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenant has 5 days to pay the rent. The tenant offered the rent money to the landlord but he refused it. The tenant contacted the Residential Tenancy Branch and was told to offer the rent again with a witness present, and the tenant did so. A copy of a statement from the witness has also been provided, and it states that the landlord refused to take the money. The tenant filed the application for dispute resolution on May 6, 2016 which was the day after the tenant and his witness attended to give the landlord the rent money.

Within the first 5 days after serving the notice, the landlord started showing the rental unit to prospective tenants. The tenant told the landlord that he had 5 days to pay the rent according to the notice and that there is a process, and the landlord grabbed it from the tenant's hand and said that it only meant the tenant had to be out in 10 days, but he'd look into it. That's the last that the tenant saw the notice.

The tenant didn't pay rent for June due to repairs required in the rental unit, and the tenant was awaiting this hearing.

The tenant also testified that the first notice given by the landlord had a wrong date of 2916 instead of 2016 and that's the notice that the landlord took from the tenant. If it was still in the tenant's possession, a copy would have been submitted for this hearing. The tenant did not receive a 1 Month Notice to End Tenancy for Cause, however the landlord told the tenant it was withdrawn.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement.

With respect to the tenant's application seeking more time than prescribed to dispute the notice to end the tenancy, the landlord testified that it was posted to the door of the rental unit on May 1, 2016. That was somewhat premature considering that rent was not yet overdue. However, serving documents in that manner are deemed to have been served 3 days later, or in this case, May 4, 2016. A tenant served with such a notice must dispute it within 5 days or pay the rent in full. If the rent is paid in full within 5 days, the notice is of no effect. In this case, the tenant disputed the notice on May 6, 2016, clearly within 5 days of deemed service, and I find that no additional time is warranted.

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 given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, the landlord was not able to tell me what the document said with respect to the reason for issuing it. The tenant testified that the landlord took it from him, which is disputed by the landlord. However, in the absence of a copy, I cannot conclude that it was in the approved form or issued in accordance with the *Act*, and therefore I cancel it.

Conclusion

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

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: June 07, 2016

Residential Tenancy Branch