



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 29, 2016 (the "Application").

The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 26, 2016 (the "10 Day Notice"); and an order granting recovery of the filing fee.

The Tenant and the Landlord each attended the hearing on their own behalf. Both provided a solemn affirmation.

The Landlord confirmed receipt of the Notice of a Dispute Resolution Hearing, and the Tenant's documentary evidence. The Landlord did not submit any documentary evidence.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the beginning of the hearing, the Landlord confirmed the correct spelling of her name. Pursuant to section 64(3) of the *Act*, I amend the Tenant's Application to reflect the spelling indicated by the Landlord.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed a month-to-month tenancy began on March 1, 2014. Currently, rent in the amount of \$2,469.60 per month is due and payable on the first day of each month.

Due to a sale of the rental property on or about June 29, 2016, the Landlord assumed responsibility for the tenancy. Effective July 1, 2016, rent was to be paid to the Landlord, who provided oral testimony that rent was not paid when due on July 1, 2016.

Although the parties agreed it was an “honest mistake”, the Landlord issued the 10 Day Notice on July 26, 2016. The parties agreed the 10 Day Notice was served on the Tenant, in person, on that date.

In reply, the Tenant testified that he paid rent in full on July 4, 2016. A copy of a bank Transaction Receipt submitted with the Tenant’s documentary evidence suggests payment was made on that date. However, the Tenant confirmed July 2016 rent was paid to the previous owner of the rental property because notice that rent was to be paid to the current Landlord was not received by him until July 4, 2016, after the payment had already been made.

The Landlord acknowledged she subsequently received a partial payment of \$1,316.50 from the previous owner of the rental property, although \$1,153.10 remains outstanding. The Landlord agreed rent is otherwise up to date.

The Tenant submits he has paid rent in full and that he should not be required to pay additional rent because the change in payee was not communicated in advance. The Tenant also testified to his belief that the previous owner of the rental property had no basis to retain part of the July 2016 rent payment.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26(1) of the *Act* requires a tenant to pay rent when due, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The Tenant asserts he paid rent in full to the appropriate party because he did not receive notice of the new payee until July 4, 2016, after the July 2016 rent payment had been made. The Landlord says \$1,316.50 remains outstanding.

I find there is insufficient evidence before me to uphold the 10 Day Notice. The Landlord provided no documentary evidence, such as a statement of account, which would corroborate

the Landlord's oral testimony concerning the amount outstanding. Neither did the Landlord provide a copy of the 10 Day Notice. Finally, although she would have been in a better position to do so, the Landlord did not submit any documentary evidence describing the reason the previous owner of the rental property retained a portion of the Tenant's July 2016 rent payment, or to dispute the rent payment was made.

In light of the above, I find that the Tenant's Application is successful and the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I award the Tenant recovery of the \$100.00 filing fee paid to commence these proceedings, and I order that this amount may be deducted from a future month's rent.

Conclusion

The Tenants' application is successful and the 10 Day Notice is cancelled.

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: September 20, 2016

Residential Tenancy Branch