



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, MNDC, MNSD, O, RP, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order cancelling a Notice to End Tenancy for Unpaid Rent or Utilities issued on August 18, 2016 (the "Notice"), an Order restricting a Landlord's right to enter the rental unit, monetary compensation from the Landlord, return of the security deposit, an Order that the Landlord make repairs to the rental unit and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the Tenant's other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The Tenant's other claims are unrelated in that the basis for them rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to address the Tenant's claim for an Order cancelling the Notice pursuant to section 46(4) and recovery of the filing fee and I dismiss the balance of the Tenant's claims with leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

The Landlord testified that the tenancy began on February 15, 2016. Monthly rent was payable on the 15th of the month in the amount of \$600.00. The Tenant also paid a security deposit in the amount of \$300.00.

The Landlord testified that the Tenant failed to pay the August 15, 2016 rent. In response she issued the Notice.

The Landlord further testified she attempted to serve the Tenant personally but he would not answer the door. She stated that she then posted the Notice to the Door on August 18, 2016. Introduced in evidence was a copy of the Proof of Service Notice to End Tenancy. The Landlord stated that she also took a photo of the Notice and sent it to the Tenant as a text message (a copy of this message was introduced in evidence).

The Landlord testified that the Tenant has also not paid the September or October rent.

The Tenant confirmed he received the Landlord's text message regarding the Notice. He further testified that he then paid the rent in cash on August 19, 2016. In support of this claim he provided a copy of his bank statement showing a withdrawal of \$600.00 on that same date. The Tenant stated that the Landlord refused to provide him a cash receipt and when he returned to his rental unit it was at that time he saw the Notice posted to the rental unit door.

The Tenant stated that he was unwilling to pay the September and October rent as the Landlord refused to provide him a receipt for his August payment and was also pursuing

an end to the tenancy even though he paid the rent within the five days required by the Notice.

The Tenant stated this was his first rental and he was unsure what to do when the Landlord refused to acknowledge his payment. He stated that he spoke to his boss who loaned him \$100.00 for the filing fee to dispute the Notice.

The Tenant also stated the Landlord has refused to provide him a residential tenancy agreement despite his repeated requests for one.

The Landlord responded that she always provides the Tenant with a cash receipt, although she did not provide copies of these receipts in evidence. She also stated that he would send her a text message regarding the rent payment and stated that there was no such text regarding the August 15 payment.

Analysis

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I accept the Tenants evidence that he paid the August rent on August 19, 2016. I am persuaded by his testimony, which I found to be forthright, as well as the copy of his bank statement showing a corresponding withdrawal.

I also accept the Tenant's evidence that the Landlord refused to provide him with a receipt for his August payment. Although the Landlord claimed she provided the Tenant with cash receipts, she did not provide copies of these receipts in evidence.

The Notice informs the Tenant that it will be cancelled if rent is paid within five days of service. While service by text message is not acceptable under the *Act*, I find that the Tenant paid the rent within one day of receiving a copy of the Notice and before the effective date of service of the Notice by posting to the door.

Accordingly, and as I have found the Tenant paid the August rent, the Tenant's request to cancel the Notice is granted. The tenancy will continue until ended in accordance with the *Act*.

As discussed during the hearing, pursuant to section 26 of the *Act*, the Tenant must not withhold rent. Although I have cancelled the Notice issued on August 18, 2016, the Landlord is at liberty to serve another notice to end tenancy for the unpaid September

and October rent. As with the August 18, 2016 notice, the Tenant will have time to pay the rent or apply to dispute the Notice, but is cautioned that repeated late payment of rent may result in the Landlord issuing a Notice to End Tenancy for Cause pursuant to section 47 of the *Act*.

The Tenant stated that he had the September and October rent payments, but was concerned about paying the rent if the Landlord would not issue a receipt. The Landlord is cautioned that she must provide receipts for cash payments pursuant to section 26(2).

Further, the Landlord is also cautioned to abide by section 13 which provides as follows:

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Should the Landlord fail to prepare a written tenancy agreement, the Tenant may apply for dispute resolution seeking an Order, pursuant to section 62(3) of the *Act*, that the Landlord comply with the *Act*.

Conclusion

The Tenant paid the outstanding rent within five days of receipt of the Notice. The Notice is cancelled and the tenancy may continue until ended in accordance with the *Act*.

The Tenant, having been substantially successful, is entitled to recovery of the \$100.00 filing fee; he may, pursuant to section 72, withhold \$100.00 from his next months' rent payment as satisfaction of this amount.

The balance of the Tenant's claims, as set out in his application filed August 25, 2016, are dismissed with leave to reapply.

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: October 21, 2016

Residential Tenancy Branch

