



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code

Tenant's Application made November 4, 2016: MT; CNR; FF.
Landlord's Application made November 15, 2016: MNR; OPR.

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenants are seeking more time to file their application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); to cancel the 10 Day Notice issued November 2, 2016; and to recover the cost of the filing fee for their application from the landlord (collectively the "Tenants' Application"). The landlord is seeking an order of possession for unpaid rent and a monetary award for unpaid rent (collectively the "Landlord's Application").

Both tenants appeared at the teleconference hearing. The landlord did not appear but had the opportunity to do so for the length of the hearing which lasted 41 minutes. Both tenants gave affirmed testimony. During the hearing the tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the tenants' Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

Tenant J.N. testified that the landlord was sent a copy of the Notice of Hearing along with the tenants' application and evidence package, by registered mail. The tenant J.N. testified that the registered mail was sent to the landlord's address on November 10, 2016. Tenant J.N. provided the Tracking Number orally to confirm the mailing. Tenant J.N. testified that he had a copy of the signature of receipt showing that the registered mail was delivered on November 17, 2016. Taking into account that the online registered mail tracing information supports the undisputed testimony of the tenant and

in accordance with section 89 of the *Act*, I find that the landlord has been duly served with the Notice of Hearing, the tenants' application and evidence package on November 17, 2016.

The tenants testified that they had not been served with the landlord's application.

Preliminary and Procedural Matters

Tenant's Application:

The tenants' application to cancel the 10 Day Notice was made on November 4, 2016. As the tenants' application was made within the 5 days after they were served on November 2, 2016, I do not need to consider the tenants' claim for more time to file their application as it was done within the proper timeframe.

Landlord's Application:

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the landlord/ applicant, the claims set out in the landlord's application were not considered. The only issues to be decided were those set out in the tenants' application.

Issue(s) to be Decided

- Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 55?
- Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to Section 72 of the *Act*?

Background and Evidence

The tenants testified that they were served with a 10 Day Notice on November 2, 2016 which was posted on the door of their rental unit. Although the 10 Day Notice names only Tenant L.N., Tenant J.N. acknowledged that he was aware his name was omitted

but understood that the notice also pertained to him. The 10 Day Notice sets out the amount of \$268.00 for unpaid rent due on November 1, 2016, with an effective date to move out by November 10, 2016.

The tenants disputed the 10 Day Notice by filing their Application for Dispute Resolution on November 4, 2016.

The undisputed testimony of the tenants is that a month to month tenancy started on October 11, 2008 pursuant to a written tenancy agreement dated September 20, 2012 which was signed by both tenants. The tenants testified that at the start of the tenancy the rent was \$933.00 due on the first day of each month. The tenants further testified that there were no additional fees required for any additional services and parking was included in the monthly rent. The written tenancy agreement confirms the testimony given in this regard.

The tenants testified that a Notice of Rent Increase was posted on the door of their rental unit on July 18, 2015 increasing the monthly rent to \$978.00 with an effective date of October 1, 2015. The tenants testified that they began to pay rent in the amount of \$978.00 starting on November 1, 2015 as they believed that the effective date of October 1, 2015 did not comply with the minimum three month notice requirements under the *Act*. The tenants accepted November 1, 2015 as the earliest date before a rent increase could take effect and that this later date complied with the notice requirements under the *Act*.

The tenants further testified that there was an additional Notice of Rent Increase that they received dated June 20, 2016 increasing the rent to \$1,006.00 effective October 1, 2016.

The tenants testified that they have been paying rent in the amount of \$1,006.00 since October 1, 2016. The tenants testified that that since the commencement of the tenancy they have paid the rent when due and that there is no unpaid rent owing. The tenants are seeking cancellation of the 10 Day Notice on this basis.

The tenants are also seeking recovery of the \$100.00 filing fee for this application from the landlord.

Analysis

Tenant's Application:

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

As the landlord was served with the tenants' Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result, I find the tenants' application is fully successful as I find the evidence supports the tenants' claim and is reasonable.

I accept the undisputed testimony of the tenants that they have paid the required amount of rent when due pursuant to the tenancy agreement and the Notice of Rent Increases. I agree with the tenants' submission that the landlord's Notice of Rent Increase that was served on July 18, 2015 did not comply with Section 42 of the *Act* and that the corrective effective date of that rent increase was November 1, 2015.

Based upon the foregoing, I find that the 10 Day Notice should be cancelled as I find that the tenants do not owe the amount set out in the 10 Day Notice for unpaid rent.

I also find that the tenants are entitled to recover the \$100.00 filing fee for this application from the landlord given that their application is fully successful.

Landlord's Application:

In the absence of any evidence or submissions from the landlord/ applicant, the landlord's application for an order of possession and monetary order is dismissed without liberty to reapply.

Conclusion

The landlord's application is dismissed without liberty to reapply.

The 10 Day Notice dated November 2, 2016 has been cancelled and the tenancy continues at this time.

The tenants are awarded recovery of the filing fee and are authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 05, 2016

Residential Tenancy Branch