



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, O

Introduction

This hearing dealt with the tenant's application filed April 13, 2017 under section 46(4) of the *Residential Tenancy Act* (the "Act") seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2017 (the "10 Day Notice"), more time in which to do so, and "other" relief as set out in the details section as follows:

Landlord served 10 Day Notice to End Tenancy for Unpaid rent and Utilities without exhausting internal remedies; namely, Landlord did not respond to Tenant February 23rd, 2017 letter (attached) requiring verification of claim for rent and parking arrears. Tenant claimed in letter that Landlord was in error; that accounting was incorrectly calculated. Tenant seeks RTB Order that 10 Day Notice is null and void for cause; and, that Landlord proceeded to reply forthwith. Claim paid without prejudice.

The tenant did not attend the hearing, which was scheduled for Tuesday, May 23, 2017 at 9:30 am. The landlord was represented by an agent and by counsel. The telephone system remained open and was monitored for 14 minutes.

Counsel for the landlord pointed to the evidence in the tenant's materials showing that the tenant had paid the amount indicated on the 10 Day Notice within five days of receipt of that notice. The landlord advised that it was content to allow the tenancy to continue in light of the tenant's prompt payment of the outstanding amount.

Analysis and Conclusion

This was the tenant's application. The burden is on the tenant to establish the claim that is made. In the absence of the tenant, I dismiss the tenant's application, without leave to reapply.

Section 46(4) of the Act provides that a tenant has five days after receipt of a 10 Day Notice to (a) "pay the overdue rent, in which case the notice has no effect, or (b) dispute

the notice by making an application for dispute resolution.” Here, there is evidence before me that the tenant has paid the amount claimed on the 10 Day Notice within five days, and that notice is accordingly void and has no effect.

As the 10 Day Notice is of no effect and the landlord does not wish to obtain an order of possession, I am not required by s. 55 to issue an order of possession in favour of the landlord.

Although the landlord's counsel made an oral request for the recovery of the filing fee for this application, recovery of the filing fee is only available to the party filing the application for dispute resolution. I therefore make no order with respect to the recovery of the tenant's filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 24, 2017

Residential Tenancy Branch