



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on April 27, 2017 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated April 4, 2017.

The Landlord, the Tenant, and two assistants for the Tenant appeared for the hearing. Only the Landlord and Tenant provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by personal service as well as the Tenant's three rent receipts. The Tenant confirmed receipt of the Landlord's three pages of evidence including rent receipts.

The parties were informed of the hearing process and no questions were asked. The parties were also given a full opportunity to present their evidence, make submissions to me, and to cross examine the other party on the evidence provided.

Issue(s) to be Decided

Has the Tenant established that the 10 Day Notice ought to be cancelled?

Background and Evidence

The parties agreed that the Tenant started to rent the rental unit at the end of the summer in 2016. Rent for the bedroom is payable by the Tenant in the amount of \$400.00 in advance on the first day of each month.

The Tenant confirmed receipt of the 10 Day Notice on the same day that it was posted on her door by the Landlord. The 10 Day Notice was provided into evidence and shows a vacancy date of April 15, 2017 due to \$450.00 payable on April 1, 2017.

The Tenant stated that she had paid all the rent in cash for April 2017 and that the Landlord had issued her with a receipt for that rent payment but had indicated on the receipt that it was for March 2017 rent. The Tenant testified that she paid the full rent of \$400.00 after getting the 10 Day Notice on the same day and there are currently no rental arrears in this tenancy.

The Landlord was asked how the Tenant had come to be in rental arrears of \$450.00 as detailed on the 10 Day Notice. The Landlord explained that in October 2016 the Tenant only paid \$350.00 for rent and that since this time, the Tenant has not paid the outstanding balance of \$50.00 which has carried over during the months thereafter.

The Landlord explained that the Tenant did not pay any rent on April 1, 2017 and therefore, the Tenant was served with the 10 Day Notice on April 4, 2017. The rent owed on the 10 Day Notice was \$400.00 for April 2017 rent and \$50.00 of outstanding rent for October 2016, for a total of \$450.00. The Landlord acknowledged that the Tenant did pay rent on April 4, 2017 in the amount of \$400.00 but is now in rental arrears of \$50.00 only.

The Tenant denied that she paid \$350.00 for October 2016 rent and stated that she paid the full amount of \$400.00. The Tenant testified that the Landlord is failing to give her rent receipts consistently for cash payments she is making. The Tenant stated that she tried to address this issue with me in a hearing that took place between the same parties on April 27, 2017 in which I declined to deal with this issue as it was not before me. The file number for that hearing appears on the front page of this Decision.

The Tenant submitted three rent receipts into evidence, one for December 2016, one for March 2017, and one for April 2017. The Tenant explained that the Landlord writes on the rent receipts that the rent is for the month prior but this is incorrect because the rent is for the month that it was paid for and not the previous month.

The Landlord provided four rent receipts into evidence: one for August, November and December 2016 rent; and one for April 2017 rent paid on April 4, 2017. The Landlord was asked whether he had issued the Tenant with a rent receipt for October 2016 which was when the Landlord claims that the Tenant failed to pay \$50.00 for that month. The Landlord explained that because the Tenant did not pay full rent, he refused to give her a rent receipt for October 2016 but testified that she had only paid \$350.00 in cash.

The Landlord explained that he had a policy that if any tenant failed to pay him full rent or he subsidised a tenant for their rent payment, he would not issue a rent receipt until the full amount was paid. The Landlord stated that he had been doing this for a long

time without any problems. The Landlord provided confusing and conflicting evidence when he was asked to explain the reason why he documented the previous month on the rent receipts when it was payable for the month of the day it was due. For example the Landlord testified that the Tenant paid \$400.00 for April 2017 rent and was not in any rental arrears apart from the \$50.00 for October 2016 rent, but then insisted the Tenant paid rent on April 4, 2017 and that this was for March 2017.

The Tenant agreed that this was confusing and this is why she was having issues with the rent receipts being provided by the Landlord which she was trying to address in the previous hearing.

Analysis

Section 46(4) of the *Residential Tenancy Act* (the "Act") provides that if a Tenant is served with a 10 Day Notice and pays the overdue rent within five days of receiving the 10 Day Notice, the 10 Day Notice has no effect.

In this case, I am satisfied by the parties' undisputed evidence that the Tenant is not in \$400.00 rental arrears for April 2017 and that this amount was paid within the five day statutory time limit provided to the Tenant after being served with the 10 Day Notice.

However, what I must determine is whether the Tenant is in rental arrears for October 2016 in the amount of \$50.00 which is where the Landlord alleges the rental arrears on the 10 Day Notice emanate from.

Section 26(2) of the Act requires that a landlord must issue a receipt for rent paid in cash. In this case, I find the Landlord has failed to follow this provision of the Act. I find the Landlord does not get to breach the Act by not issuing a rent receipt on the basis that any tenant fails to pay full rent. In such a case, the Landlord is still obligated to issue a rent receipt for the actual amount paid and then deal with any balance of outstanding arrears with a 10 Day Notice.

The Landlord provided no rent receipt to the Tenant for the payment made in October 2016 that reflects the amount that was paid. Accordingly, I find the parties evidence with respect to the alleged \$50.00 rent arrears results in one party's word against the other. With no other supporting or corroborating evidence, I am unable to decide this matter conclusively. However, I find the Landlord's evidence regarding how he records payments on the rent receipts was inconsistent. Coupled with the fact that the Landlord has breached the Act by failing to give the Tenant consistent and accurate rent receipts throughout this tenancy, I find that on the balance of probabilities, the Landlord has

failed to satisfy me that the Tenant was in any rental arrears for October 2016. I find the Landlord failed to accurately and consistently reflect the amount of \$50.00 outstanding through all of the months from that time onwards on rent receipts that should have been issued to the Tenant in this tenancy.

Conclusion

The Landlord has only proved that the Tenant was in rental arrears of \$400.00 by April 1, 2017. As the Tenant paid this amount to the Landlord on April 4, 2017 and namely within the five day time limit after getting the 10 Day Notice, I find the 10 Day Notice has no effect and is hereby cancelled. The Tenant's Application is granted and the tenancy will resume until it is ended in accordance with the Act.

The Landlord is cautioned to comply with the Act in issuing any tenant with accurate recent receipts when rent is paid by cash.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 06, 2017

Residential Tenancy Branch