



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR OLC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord provided undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of June 30, 2017, on May 26, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on May 26, 2017.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee for this application?

Should the tenants be granted more time to make their application to cancel the 10 Day Notice?

Background and Evidence

The tenants testified to the following facts. This month-to-month tenancy began in October 2011, with monthly rent currently set at \$950.00, payable on the first of each month. The tenants continue to reside in the rental unit.

The tenants testified that they were given the 10 Day Notice on May 26, 2017 after they had paid the outstanding rent to the landlord. The tenants acknowledged that they were late in paying rent, but the landlord waited until five minutes after the rent was paid before issuing the 10 Day Notice to them.

The landlord did not dispute the tenant's testimony, stating that she had issued the 10 Day Notice in error as she meant to issue a 1 Month Notice to End the Tenancy for Cause. The landlord confirmed that the tenants no longer owed any rent, and that she had issued the 10 Day Notice after payment was made.

Analysis

The landlord acknowledged in the hearing that the 10 Day Notice was issued after the tenants had made payment, and that no rent was outstanding when the 10 Day Notice was issued to the tenants.

The landlord also indicated in the hearing that she had intended to give a 1 Month Notice to End Tenancy to the tenants, and that she had given the 10 Day Notice in error. Based on these circumstances I am allowing the tenants' application to cancel the 10 Day Notice dated May 26, 2017, and this tenancy is to continue as per the *Act*.

As the 10 Day Notice is cancelled, the tenants' application for more time to make their application is dismissed.

As no submissions were made in regards to the tenants' application for the landlord to comply with the *Act*, regulation, or tenancy agreement, this portion of the tenants' application is dismissed.

As the tenants were successful in their application, I am allowing them to recover the \$100.00 filing fee for this application.

Conclusion

I allow the tenants' application, and the 10 Day Notice is cancelled. The 10 Day Notice dated May 26, 2017 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed.

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: August 3, 2017

Residential Tenancy Branch