



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kasapi Construction Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on September 12, 2017. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and,
- to recover the filing fee for the cost of this application.

The Landlord's agents, P.C. and N.S., both attended the hearing and provided affirmed testimony. The Tenant and his father also attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

Issues to be Decided

- Should the 10 Day Notice dated August 2, 2017, be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee?
- Is the Landlord entitled to an order of possession?

Background and Evidence

As per the tenancy agreement provided into evidence, the tenancy began on April 1, 2005. Rent is currently \$876.00 per month and is due on the first day of each month.

The Landlord's Agents, N.S. and P.C., stated that the Tenant has been repeatedly late paying rent. They further testified that on August 2, 2017, N.S. slid a copy of the 10 Day Notice under the front door because rent in the amount of \$671.00 was still outstanding as of that date. Service of this document was witnessed by a friend of N.S.

The Tenant testified that he received the 10 Day Notice on August 5, 2017. The Tenant further testified that he tried to pay the building manager, N.S., on August 8, 2017, once he obtained enough money to pay his outstanding rent. He testified that N.S. refused his payment. The Landlord's other agent, P.C., testified that they denied the rent payment from the Tenant on August 8, 2017, because they wanted to proceed with the eviction. Documentary evidence shows that the Tenant disputed the 10 Day Notice on August 9, 2016.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note that the Landlord's Agent gave the Tenant a copy of the 10 day Notice by putting it under his front door on August 2, 2017. However, this is not an approved method of service, as per section 88 of the *Act*. Regardless, the Tenant acknowledged receipt of this document on August 5, 2017. As per section 46 of the *Act*, the Tenant, within 5 days of receiving the notice, may pay the overdue rent. If the Tenant does this, the notice has no effect.

In this case, the Tenant tried to pay the outstanding rent on August 8, 2017, which was within the 5 days permitted under the *Act*. The Landlord confirmed in their testimony that they refused the payment, which they were not entitled to do in this case. As such, I find the 10 day Notice has no effect.

I find the Tenant's application is successful. The 10 Day Notice issued by the Landlord dated August 2, 2017, is set aside. The tenancy will continue until ended in accordance with the *Act*.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I

order that the Landlord repay the \$100.00 fee the Tenant paid to make the application for dispute resolution. I authorize the Tenant to reduce a future rent payment by \$100.00 in order to compensate him for the filing fee.

As I have determined the 10 Day Notice is of no effect, I will not grant the landlord an order of possession.

Conclusion

The Tenants' application is successful. The 10 Day Notice issued by the Landlord is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: September 12, 2017

Residential Tenancy Branch