



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I attempted to confirm service. The tenant confirmed receipt of the 10 Day Notice dated July 12, 2017 on that same date. I find the 10 Day Notice was served pursuant to section 88 of the *Act*. The landlord testified that he did not receive the tenant's application for dispute resolution or evidence. The tenant said that the application and evidence were served on the landlord by registered mail and submitted a Canada Post tracking number and print out of the tracking delivery progress page showing the package as delivered and signed by a signatory with the same name as the landlord. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on July 27, 2017, five days after mailing.

Issue(s) to be Decided

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

Background and Evidence

The monthly rent for this tenancy is \$1,800.00 payable on the first of each month. The tenant testified she provided the landlord with post-dated cheques for her monthly rent. In July, at the landlord's request, she paid the landlord cash on July 5, 2017. The tenant said that she gave the cash to the landlord directly and he issued her a receipt. The tenant submitted a copy of the receipt into written evidence. The tenant said that the landlord did not initially return her post-dated cheques, and the landlord attempted to cash the July cheque. The cheque was returned, not sufficient funds as the tenant had paid the rent by cash already. The tenant submitted into written evidence a copy of the bank statement showing the July, 2017 cheque as not sufficient funds. The tenant said that the other post-dated cheques were returned to her and she submitted into written evidence the cheques for August, September, and October. The tenant testified that she has been paying cash for the rent for those months but has not been provided with any receipts by the landlord.

The landlord testified that he was hospitalized on July 5, 2017 and therefore could not have received the cash payment from the tenant on that date nor could he have issued a receipt. The landlord submitted into written evidence a copy of a discharge report from a hospital as evidence of his absence. The landlord testified that the tenant has not paid rent for July, August, September or October, 2017.

The landlord's manager testified that she was provided with post-dated cheques by the tenant on July 5, 2017 which is why she issued the receipt for \$1,800.00 on that date. She said that the receipt was meant to indicate that a cheque had been received not whether the cheque was found to be sufficient. She said the tenant did not provide her with any other payment in cash.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$1,800.00 at the time the 10 Day Notice was issued. The tenant denies that there was a rental arrear and testified that she had provided a cash payment to the landlord directly for which she was issued a receipt.

Considered in its totality, I find the evidence presented by the tenant to be more credible than that of the landlord. I accept the tenant's testimony that she provided the landlord

with a cash payment for July rent and was provided a receipt on July 5, 2017. While the landlord said that he was hospitalized on that date, the discharge report indicates that he was first admitted on that date. The landlord may have collected payment and issued a receipt prior to being admitted. I do not find the landlord's evidence to be conclusive that he did not accept payment from the tenant on that date. I do not find the landlord's manager's testimony that she issued a receipt when the post-dated cheque was provided to be credible. If receipts are issued for cheques when the cheques are provided as the manager testified, then it would be reasonable to expect that receipts would have been issued for other post-dated cheques. However, no other receipts issued on the date when a post-dated cheque was received was submitted into written evidence. I find it more probable that the tenant provided a cash payment and was given a receipt confirming payment of the July rent.

I find that the landlord has not established the evidentiary basis in order for the 10 Day Notice to be upheld.

Conclusion

The landlord's 10 Day Notice, dated July 12, 2017, is cancelled and of no force or effect. This tenancy continues until it is 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: October 2, 2017

Residential Tenancy Branch