



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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*.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. The Landlord did not attend. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of the documents as explained below.

The Tenant testified that the Application, the Notice of Hearing, and their evidence was sent to the Landlord by registered mail on September 16, 2017. As a result, I find that the Landlord was deemed served on September 21, 2017, five days after the documents were sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

The Tenant testified that evidence, including a copy of the 10 Day Notice, was submitted to the Residential Tenancy Branch (the "Branch") in compliance with the *Act* and the Rules of Procedure. However, no evidence was before me for consideration in either the physical or electronic file and there was no indication in the Tenants file that evidence had been received. As there was no documentary evidence before me for consideration, I advised the Tenant that none would be considered in my decision. However, I advised the Tenant that I would still accept their affirmed testimony in the hearing in relation to any these documents.

The Tenant also stated that they wish to amend their Application to include recovery of the filing fee. Section 72 of the *Act* states that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director. As a result, I find that I do not need to amend the Application in order to consider whether the Tenant is entitled to the recovery of the filing fee.

Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the *Act*?

Is the Tenant entitled to an Order for the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement?

If so, is the Tenant entitled to recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

If the Tenant is not successful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Tenant testified that on September 10, 2017, they received a 10 Day Notice by registered mail for the non-payment of September rent. The Tenant testified that the 10 Day Notice was submitted to the Branch, however, a copy was not before me for consideration. The Tenant testified that they sent the original 10 Day Notice to the Branch and did not retain a copy for themselves and therefore, they could not provide a copy to me. As a result, I accepted the Tenants undisputed and affirmed testimony that they received a 10 Day Notice for the non-payment of September rent on September 10, 2017, with an effective vacancy date of September 20, 2017.

The Tenant testified that the rent was not paid on-time due to a bank error and that the Landlord automatically issued the 10 Day Notice, which they did not receive by registered mail until after they had paid the rent in full on September 7, 2017. As a result, the Tenant testified that the 10 Day Notice is of no force or effect.

The Tenant also applied for an Order for the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement, and the Tenant testified that they want the Landlord to comply with section 46(4) of the *Act* which states that the 10 Day Notice is of no force or effect if the overdue rent is paid within five days after receiving the 10 Day Notice.

The Landlord did not appear at the hearing to provide any evidence of testimony for consideration or in support of the 10 Day Notice.

Analysis

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the *Act* to issue the Notice to End Tenancy. As the Landlord did not attend the hearing or provide any evidence for consideration, I find that they have failed to establish, on a balance of probabilities, that they had cause to end the tenancy under the *Act*. As a result, the 10 Day Notice is cancelled and the tenancy continues in full force and effect until the tenancy is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, the Tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

I order that the 10 Day Notice with an effective vacancy date of September 20, 2017, be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

The Tenant is also entitled to recovery of the \$100.00 filing fee, which I order them to deduct from the next months rent.

At the request of the Tenant, a copy of this decision will be e-mailed to them at the address they provided in the hearing.

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: November 9, 2017

Residential Tenancy Branch