



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR CNR DRI OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlords applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- an monetary award for unpaid rent pursuant to section 67 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a cancellation of the landlord's notice to end tenancy pursuant to section 46 of the *Act*,
- an order cancelling an additional rent increase pursuant to section 43 of the *Act*, and
- an order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*.

Only the landlord K.D. appeared at the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Undisputed testimony from the landlord explained that two separate 10 day notices to end tenancy were served on the tenant. The first notice issued on September 9, 2017 was posted on the tenant's door. This was for unpaid rent of \$1,400.00. The landlord said a second notice issued on October 8, 2017 for unpaid rent of \$1,400.00 was posted on the tenant's door.

Pursuant sections 88 & 90 of the *Act*, the tenant is found to have been served with the 10 Day Notice posted on her door on September 9, 2017 in accordance with the *Act* on September 12, 2017, three days after its posting.

Preliminary Issue

The landlord explained that a second notice to end tenancy for unpaid rent was served to the tenant on October 8, 2017. The landlord said that this notice was provided to the *Residential Tenancy Branch* when he submitted his application for dispute resolution. An examination of the evidence submitted at the hearing reveals no such notice, nor was any proof of service document submitted to the hearing as part of the landlord's evidentiary package.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that neither party has provided a copy of the 10 Day Notice issued on October 8, 2017 to the hearing and therefore cannot consider the issues related to the notice to end tenancy present on this second notice. The tenant's failure to attend this hearing and present evidence relating to her application leads me to order that her application directing the landlord to comply with the *Act* and disputing an additional rent increase is dismissed.

As no copy of the 10 Day Notice issued on October 8, 2017 was entered into evidence, I can make no determination on its validity, and I will solely focus on the 10 Day Notice found to have been served on the tenant on September 12, 2017.

Issue(s) to be Decided

Can the tenant cancel the notice to end tenancy? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Should the landlord be directed to comply with the *Act*?

Can the tenant dispute a rental increase?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord that this tenancy began on April 1, 2012. Rent was \$1,400.00 per month, and a security deposit of \$700.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that he was seeking an Order of Possession for unpaid rent. The landlord said that while currently not owing any rent, the tenant was late paying rent on in September and October 2017. The landlord noted that he issued a 10 Day Notice to the tenant on September 9, 2017 for unpaid rent of \$1,400.00, and that this rent was paid on September 17, 2017. On October 8, 2017 a second 10 Day Notice for unpaid rent was allegedly issued to the tenant. The landlord explained that on October 20, 2017 he received a payment of \$433.00 and then on November 21, 2017 he received a payment of \$1,015.00. At the hearing the landlord noted that receipts were given to the tenant on both occasions, and that these payments were accepted as rent.

Analysis

The landlord testified that the tenant paid the outstanding rent owing for September and October 2017.

At the hearing it was explained by the landlord that the tenant was served a 10 Day Notice to End Tenancy for unpaid rent on September 9, 2017 by way of posting it on the rental unit's door. Pursuant to section 90 of the *Act*, the tenant is deemed served with this notice on September 12, 2017, three days after it was posted on the door. According to section 46 of the *Act*, the tenant therefore had 5 days to dispute the notice or pay the rent. The landlord said that the tenant paid the entirety of rent for September 2017 on September 17, 2017, the fifth and final day on which rent was due. I find that

rent for September 2017 was paid in accordance with the *Act* and that the unpaid rent for this month was received in time to cancel the landlord's notice to end tenancy for September 2017.

As the landlord was unsuccessful in his application, the landlord must bear the cost of his own filing fee.

Conclusion

The tenant is successful in her application to cancel the landlord's notices to end tenancy. The landlord's 10 Day Notice of September 9, 2017 is cancelled and is of no force and effect. This tenancy shall continue until ended in accordance with the *Act*.

The landlord's application for an Order of Possession related to a 10 Day Notice issued on October 8, 2017 is dismissed without leave to reapply.

The landlord's application for a monetary award was withdrawn as no rent remained outstanding.

The tenant's application disputing an additional rent increase and for an order directing the landlord to comply with *Act* 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: November 28, 2017

Residential Tenancy Branch