



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creighton & Associates Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on November 29, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The landlord testified that he sent the Notice of Hearing package to each of the tenants on September 20, 2017. I find the tenants are deemed to have received this package on September 25, 2017, the fifth day after it was mailed, pursuant to Section 90 of the *Act*.

The landlord was 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The landlord testified that current rent is \$1,450.00, and is due on the first day of each month. The landlord holds a security deposit of \$725.00.

The Landlord testified that the Tenants have been repeatedly late paying rent for the last several months. Each month, the Landlord stated that he issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The Landlord stated the following:

- A 10 Day Notice was issued on June 5, 2017, (posted to door) for unpaid rent for that month. The Tenants paid rent in full on June 8, 2017.
- A 10 Day Notice was issued on July 5, 2017, (delivered in person) for unpaid rent for that month. The Tenants paid rent in full on July 10, 2017.
- A 10 Day Notice was issued on August 4, 2017, (posted to door) for unpaid rent for that month. The Tenants paid rent in full by August 11, 2017.
- A 10 Day Notice was issued on September 4, 2017, (posted to door) for unpaid rent for that month. The Tenants paid rent in full on September 12, 2017.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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(1) 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, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

First, I find it important to note the dates that the Tenants received each of the 10 day Notices. Pursuant to section 90 of the *Act*, documents attached to the front door of the rental unit are deemed to be received 3 days after they are posted. Further, documents delivered in person are deemed to be received the same day.

Each time the Landlord issued a 10 Day Notice (as specified above), the Tenants had 5 days, after receipt of the 10 Day Notice, to pay rent in full or file an application for dispute resolution. After considering the deemed service dates for each of the 10 Day

Notices, pursuant to section 90 of the Act, I find the evidence shows that the Tenants paid rent in full for each month (June, July, August, and September 2017) within 5 days of receiving each of the 10 Day Notices. As such, all 4 of the 10 Day Notices specified above are of no force and effect. The Landlord`s application is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Landlord was not successful in this hearing, I decline to grant an order requiring the tenant to repay the \$100.

Conclusion

The Landlord`s 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: November 29, 2017

Residential Tenancy Branch