



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

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

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 agent for the Landlord (the “Agent”), and the Agent for the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any Orders issued in their favor will be sent to them in the manner requested in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the participant M.F, who is the Applicant’s mother, stated that although she has attended the hearing on behalf of the Applicant, she is also a

Tenant of the property as the coach house where the Applicant lives and the main house where she lives are rented under one tenancy agreement. The Agent for the Landlord testified that this is not correct; however, both parties acknowledged that the amount of rent due each month for the main house is \$3,600.00 and the amount of rent due each month for the coach house is \$500.00. Neither party submitted a copy of a tenancy agreement. The 10 Day Notice in the documentary evidence before me indicates that it was issued only in the name of the Applicant and states that as of May 1, 2017, the Applicant owed \$3,500.00 in outstanding rent: \$500.00 per month for May 1, 2017 – November 1, 2017. Based on the information contained in the 10 Day Notice, and in the absence of any documentary evidence to the contrary, I find that the 10 Day Notice only applies to the Applicant and the Applicant's rental unit. As a result, the Applicant will be referred to as the Tenant throughout the decision and M.F. will be referred to as the Tenant's Agent.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claim relates to whether the tenancy will continue and the payment of rent. I also note that the Tenant was given a priority hearing date to deal with this specific issue. Further to this, I find that the other claim by the Tenant is not sufficiently related the continuation of the tenancy or the payment of rent and as a result, I exercise my discretion to dismiss the Tenant's claim for an Order suspending or setting conditions on the Landlord's right to enter the rental unit with leave to reapply.

Preliminary Matter #3

During the hearing the Agent for the Landlord requested permission to submit additional documentation in support of their testimony after the conclusion of the hearing, such as bank records, rent receipts, a ledger, or direct evidence from the Landlord. Rule 3.15 of the Rules of Procedure states that the respondent's evidence must be received by the applicant and the Branch not less than seven days before the hearing. Rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Branch

in accordance with the *Act* or the Rules of Procedure may or may not be considered depending on whether the party can show to the arbitrator that the new and relevant evidence was not available when they served and submitted their evidence.

The ability to know the case against you and to have an opportunity to review and respond to the evidence the other party intends to rely on in the hearing are fundamental principles of procedural fairness and natural justice. As the Agent for the Landlord acknowledged receiving the Application, the Notice of Hearing, and the evidence from the Tenant in advance of the hearing, I find that the Agent for the Landlord was well aware of the fact that this hearing dealt with the issue of the payment of rent.

The Notice of Hearing clearly states on page one that it is important to have evidence to support your position with regards to the claim(s) listed on the application and that the Rules of Procedure apply to the dispute resolution proceeding. The Notice of Hearing also provides information on how to access the Rules of Procedure online. As a result, I find that the Agent for the Landlord knew, or ought to have known, the importance of evidence in the hearing. Further to this, I find that the evidence the Agent for the Landlord requested to submit after the conclusion of the hearing could reasonably have been expected to be available for submission at least seven days before the hearing. As a result, the Agent's request to submit additional evidence for consideration after the conclusion of the hearing was denied, and the decision will be rendered based on the testimony provided by both parties in the hearing and the documentary evidence before me at that time of the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 10 Day Notice?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenant is unsuccessful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

Although the parties disagreed about when the tenancy began, with whom, and whether there is a written tenancy agreement in place, they agreed that the Tenant currently resides in the coach house on the property and is required to pay \$500.00 in rent on the

first day of each month. The Agent for the Landlord testified that he took over management of the property, which is owned by his mother, from his brother, who was a previous agent for the Landlord, on June 27, 2018. The Agent for the Landlord stated that at that time, the Tenant was advised that rent needs to be given to him each month and needs to be payable to his mother. The Agent testified that since taking over the property, the Tenant has not paid any rent and as a result, he served the Tenant with a 10 Day Notice.

The 10 Day Notice in the documentary evidence before me, dated November 21, 2017, has an effective vacancy date of December 5, 2017, and states that the Tenant owes \$3,500.00 in outstanding rent; \$500.00 a month for May, 2017 – November, 2017. The 10 Day Notice also indicates that it was posted to the door of the Tenant's rental unit on November 21, 2017, which is supported by the Agent for the Landlord's testimony and the Application in which the Tenant acknowledged receiving the 10 Day Notice as outlined above.

The Agent for the Tenant denied that any rent is owed and testified that the Tenant's rent, along with her rent for the main house on the property, has been paid in full each month since the start of the tenancy via post-dated cheque. The Agent for the Tenant testified that at the start of the tenancy, it was discussed with the former Agent of the property, who is also the son of the Landlord, that rent would be paid by post-dated cheque. The Agent for the Landlord stated that another member of the Landlord's family who parks on the property picked up the post-dated cheques at the start of the tenancy and gave them to the previous Agent for the Landlord. The Agent for the Tenant testified that the cheques are in the name of the Landlord and are cashed each month. In support of her testimony, the Agent for the Tenant provided copies of her bank records showing the cheques cashed each month and letters from both the former Agent for the Landlord and the Landlord's other family member confirming that cheques were received and that rent has been paid each month and is up to date as of November 1, 2017.

The Agent for the Landlord alleged that the letters from his other family member are fraudulent but did not provide any documentary or other evidence in support of this claim. The Agent for the Landlord stated that although the cheques show as cashed in the bank statements provided by the Agent for the Tenant, they do not show who cashed these cheques and pointed out that the Tenant has not provided copies of the actual cheques. As a result, the Agent for the Landlord argued that the Tenant could be writing these cheques to anyone, including himself or his mother.

Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the Act, I find that the Tenant was served with the 10 Day Notice on November 21, 2017, the date they acknowledged receiving it in their Application. I also find that the Tenant was obligated to pay the monthly rent of \$500.00, on time and in full each month.

The 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 they had sufficient cause under the *Act* to issue the notice. Although the Agent for the Landlord testified that rent has not been paid by the Tenant from May 1, 2017 – to the current date, the Agent did not submit any documentary evidence in support of his testimony and there was no testimony or documentary evidence before me for consideration from the Landlord herself. In contrast, the Tenant's Agent testified that rent has been paid in full and submitted documentary evidence in the form of bank statements and letters from two of the Landlord's family members who previously acted as Agents for the property, stating that they received post-dated cheques for the Tenant's rent and that the Tenant's rent had been paid in full up-to and including November, 2017.

Although the Agent for the Landlord alleged that the letters from his family members are fraudulent, he did not submit any documentary evidence in support of this testimony, or call the family members in question as witnesses, despite having full disclosure of these letters as part of the Tenant's evidence package in advance of the hearing. The Agent for the Landlord also argued that the Tenant could be writing the cheques in question to anyone and questioned why the Tenant did not submit copies of the cheques themselves to prove they were in the Landlord's name. As stated above, it is the Landlord who bears the burden of proof in this review, not the Tenant, and as a result, I find that it was the Agent's responsibility to demonstrate that rent has not been paid, not the Tenant's responsibility to demonstrate that it was. In any event, the burden of proof

in this matter is on a balance of probabilities and I find the testimony and documentary evidence from the Tenant and the Tenant's Agent more fulsome, reliable, and persuasive than the testimony of the Landlord which has not been supported by any such evidence. Further to this, I find the allegations of fraud made by the Landlord speculative in nature and I therefore give them no weight.

Based on the above, and having carefully reviewed the evidence before me from both parties, I find that the Agent for the Landlord has failed to establish, on a balance of probabilities that the Tenant owed any rent on the date that the 10 Day Notice was served. As a result, I am not satisfied that the Landlord had cause to end the tenancy under section 47 of the *Act* and I therefore grant the Tenant's claim and Order that the 10 Day Notice be cancelled.

Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to the recovery of the \$100.00 filing fee, which they are entitled to deduct from the next month's rent or otherwise recover from the Landlord.

Conclusion

I Order that the 10 Day Notice dated November 21, 2017, be cancelled and that tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to the recovery of the \$100.00 filing fee, which they are entitled to deduct from the next month's rent or otherwise recover from the Landlord.

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: February 23, 2018

Residential Tenancy Branch