



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a cancellation of a notice to end tenancy for unpaid utilities or rent pursuant to section 46 of the *Act*;
- an Order disputing an additional rent increase pursuant to section 43 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's 10 Day Notice after it was posted on his door on approximately January 25, 2018. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord's 10 Day Notice.

The tenant said that he served the landlord in person on approximately January 28, 2018 with his application for dispute resolution. The landlord acknowledged receipt of the tenant's application for dispute.

Neither party supplied any evidence to the hearing, other than oral testimony.

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Can the tenant dispute an additional rental increase?
Is the tenant entitled to a return of the filing fee?

Background and Evidence

The tenant provided undisputed testimony to the hearing that this tenancy in question began in October 2007. Rent is \$775.00 per month, and a security deposit of \$350.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that she issued a 10 Day Notice because \$250.00 in unpaid TV service remained outstanding. The landlord explained that this issue of non-payment of this utility had continued throughout the tenancy for some time, and that the tenant had provided her with numerous assurances that the non-payment would be addressed. She said that continued disagreements with the tenant regarding the non-payment of the TV services, along with other issues of contention, led her to issue a 10 Day Notice. The landlord argued that the tenant was well-aware of the unpaid utility as she had provided him with copies of her ledgers displaying non-payment, on several occasions.

The tenant disputed the landlord's version of events and said that no money remained outstanding on the TV services. He argued that these services were not used by him, and he explained that he had in fact urged the landlord to suspend the particularly TV package at the center of dispute between the parties. The landlord disputed this, arguing that the tenant had actually ordered TV services above and beyond what the parties had agreed to.

Analysis

Section 46 of the *Act* states 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. The only way that a tenant can cancel this notice is by:

Section 46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

When a tenant has disputed a landlord's Notice to End Tenancy in accordance with the *Act*, the burden of proof related to the validity of a Notice to End Tenancy is transferred to the landlord. In this case, I find that the tenant has disputed the notice in accordance with section 46(5) of the *Act*, and that the landlord therefore had a duty to supply evidence to the hearing that rent or utilities remained unpaid after the issuance of a 10 Day Notice.

After considering the oral testimony of the parties, I find that the landlord has provided insufficient evidence that the tenant has not paid all rent and utilities due under the terms of the tenancy agreement. The parties provided conflicting testimony as to their understanding of the amount of utilities due, and regarding the services which are included with the tenancy agreement. No copy of the 10 Day Notice was provided to the hearing, nor was a copy of the tenancy agreement or a copy of ledgers showing non-payment of TV services. I find that the landlord has failed to show that the amount sought in the 10 Day Notice remains outstanding. The tenant was successful in his application and this tenancy shall continue until it is ended in accordance with the *Act*.

Insufficient evidence was provided to the hearing by the tenant that a rental increase was being sought by the landlord. I find that rent remains at \$775.00 per month, until it is increased in accordance with the *Act*.

As the tenant was successful in his application, he may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord. In place of a monetary award, I allow the tenant to withhold \$100.00 from a future rent payment on one occasion, in full satisfaction for a return of the filing fee.

Conclusion

The tenant was successful in cancelling the landlord's 10 Day Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment, in satisfaction for a return of the filing fee.

The tenant's application disputing an additional rent increase is dismissed with leave to reapply.

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: March 26, 2018

Residential Tenancy Branch