



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence and testimony provided has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord's agent agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled and the tenancy continues.

Issue(s) to be Decided

The issue remaining to be decided is: should the tenant recover the \$100.00 filing fee from the landlord?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on February 1, 2011 and reverted to a month-to-month tenancy after the first year, and the tenant still resides in the rental unit. Rent in the amount of \$1,525.90 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the then landlord collected a security deposit from the tenant in the amount of \$712.50 which is still held in trust by the current landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex.

The landlord's agent further testified that on February 2, 2018 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental unit, and a copy has been provided for this hearing. It is dated February 2, 2018 and contains an effective date of vacancy of February 12, 2018 for unpaid rent in the amount of \$4,357.26 that was due on February 1, 2018.

10 Day Notices to End Tenancy are automatically generated from the landlord's head office and amounts are typically wrong and the landlord's agent checks them and changes them if incorrect. In this case the tenant paid by cheque on February 1, 2018 and always pays on the 1st of each month. However, the landlord's agent was away at the time and it was simply a clerical error; the tenant's cheque had been received but had not been entered into the system before the notice was issued.

The landlord's agent returned to work on February 5, 2018 and spoke to the tenant advising that the payment had been received in full and the notice was posted in error, but did not put it in writing. The landlord's agent does not have the authority to issue anything in writing and the person responsible for that was not available, but the landlord's agent told the tenant on more than 1 occasion that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was void.

The tenant testified that on February 1, 2018 the tenant paid the rent. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door on February 2, 2018 while the tenant was at home. No one even knocked on the door. It was very upsetting to get it and the tenant called the landlord's office and received an answering service. Nothing could be done over the weekend. On the following Monday the tenant discovered that the landlord had cashed the rent cheque. The tenant spoke to the landlord's agent only on one occasion, and advised the landlord's agent that the tenant needed a written acknowledgement and was told that it would have to come from the head office in Ontario. The tenant called the office of the landlord again on February 6, 2018 and the person who answered said to ignore it and he provided an email when the tenant requested something in writing, but it was not a full retraction. A copy of the email has been provided as evidence for this hearing. It is dated February 6, 2018 and the writer apologizes for the issuance of the notice and asks the tenant to disregard it.

The tenant had contacted the Residential Tenancy Branch and was advised that something in writing from the landlord was necessary, or the tenant would have to dispute the notice.

The tenant received a letter with a full retraction after the tenant had filed this dispute. The tenant testified that if the letter had been received prior, the tenant would not have filed the dispute, and the situation cost the tenant a lot of time and research.

Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant pays the rent within the 5 days, the notice is of no effect.

However, if the tenant doesn't pay the rent in full or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the parties agree that the rent was paid prior to the issuance of the notice, and the tenant took some effort in attempting to have the landlord's agents put it in writing that the notice was issued in error and was retracted. Sending an email does not really suffice, in that had the landlord applied for an Order of Possession, the tenant would likely not have had a leg to stand on at the hearing if the tenant had not disputed the notice.

In the circumstances, I am satisfied that the tenant had to dispute the notice or risk losing her home. Therefore, I find that the tenant is entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, and by consent, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Sections 67 and 72 of the *Residential Tenancy Act*, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: April 11, 2018

Residential Tenancy Branch