



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRT, LRE, RR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties 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 NS primarily spoke on behalf of both co-tenants (the "tenant"). The landlord was represented by counsel MP (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenants' application for dispute resolution dated March 5, 2018 and the tenants' evidence. Based on the undisputed testimony I find that the landlord was served with the application and evidence in accordance with sections 88 and 89 of the *Act*.

During the hearing the tenant said that they wished to focus on the issue of the 10 Day Notice and withdrew the remaining portions of their application.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following facts. This tenancy began in February, 2018. The monthly rent is \$1,300.00 payable on the first of the month. The tenants made a payment of \$1,300.00 by electronic funds transfer on February 1, 2018.

The landlord issued a 10 Day Notice dated February 2, 2018. While the tenant was uncertain when the 10 Day Notice was received the landlord testified that the 10 Day Notice was served on the tenants by registered mail in March, 2018. The landlord testified that the 10 Day Notice was served on March 4, 2018 according to online tracking of the package through the Canada Post website. The landlord explained that the 10 Day Notice contains an error and it was issued on March 2, 2018 as the tenants failed to pay any rent for March. The landlord said that they did not issue a corrected 10 Day Notice nor did they amend the 10 Day Notice which shows a date of February 2, 2018.

Analysis

Subsection 46(1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by providing a notice that complies with the form content requirements of section 52. In the present case the landlord issued the 10 Day Notice dated February 2, 2018 claiming unpaid rent of \$1,300.00 that was due on February 1, 2018. However, the parties gave undisputed testimony, supported by documentary evidence that the tenants paid that amount on February 1, 2018.

Based on the undisputed evidence I find that this 10 Day Notice is of no force or effect as the amount it claims is due and owing was paid by the tenants on the date it was due. The landlord stated that the dates provided on the notice were a typographic error. I find that the date that rent is due is a fundamental component of a 10 Day Notice and by providing an incorrect date the notice does not meet the requirement of section 52 and is of no force or effect.

The landlord has the opportunity to revise the original notice and issue a corrected 10 Day Notice. The landlord did not do so. I find that the 10 Day Notice dated February 2,

2018 does not conform to the form and content requirement of section 52 and claims an amount for unpaid rent that the parties have agreed was paid on February 1, 2018 and is therefore of no force or effect.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenants' application is withdrawn.

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: May 22, 2018

Residential Tenancy Branch