



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 17, 2018 (the "Application"). The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 16, 2018 (the "10 Day Notice"), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on her own behalf. The named Landlord did not attend. Rather, P.M., the named Landlord's son, attended the hearing and was represented by S.A., an agent. The parties agreed that P.M. has acted as Landlord for most of the tenancy and that it would be appropriate to add P.M. as a party to these proceedings. Both the Tenant and P.M. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified she served the Application package on the Landlord in person but was unable to recall the date of service. She stated the Landlord identified himself as such while P.M. was away. P.M. testified that neither the Landlord nor P.M. were served with the Application package as alleged. Rather, P.M. stated he first became aware of the hearing on June 4, 2018. As the Landlord received notice of the Application two weeks before the hearing, I am satisfied the hearing should proceed. With respect to the Tenant's documentary evidence, received at the Residential Tenancy Branch on June 3, 2018, I find there is insufficient evidence of service in accordance with the Rules of Procedure. With the exception of the 10 Day Notice, the Tenant's documentary evidence has not been considered further.

The Landlords did not submit documentary evidence in response to the Application.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions. 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.

Preliminary and Procedural Matters

During the hearing, S.A. advised that the Landlord's application for dispute resolution is scheduled to be heard on July 20, 2018. She requested that the hearing be brought forward to today's date, which request was declined. The file number of the related proceeding is included above for ease of reference.

Issue to be Decided

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

Background and Evidence

The parties agreed the tenancy began on April 1, 2017. Their agreement ended there. The Tenant testified her rent was \$700.00 per month, which was always paid directly to the Landlord. P.M. disagreed and testified that rent was due in the amount of \$1,400.00 per month. The Tenant testified she paid a security deposit of \$350.00, which the Landlord holds.

P.M. testified that rent in the amount of \$1,400.00 per month is due on the first day of each month. He testified that the Tenant paid only \$700.00 for the month of April 2018, but that \$700.00 was not paid. Accordingly, the Landlord issued the 10 Day Notice. The Application confirmed the Tenant received the 10 Day Notice on April 16, 2017.

In reply, the Tenant testified she has always paid \$700.00 per month directly to P.M. Even when her roommate moved out at the end of October 2017, the Landlord continued to accept \$700.00 per month from the Tenant until the 10 Day Notice was issued.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, I find the Landlords have provided insufficient evidence to confirm the amount of rent due under the tenancy agreement. The parties' oral testimony is contradictory in this regard. The Landlords' evidence is not supported by documentary evidence, even though they were aware of the hearing as early as June 4, 2018, and have been represented by an agent. Accordingly, I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accord with the *Act*.

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: June 18, 2018

Residential Tenancy Branch