



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MT, RP, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel 10-Day Notice to End Tenancy for Unpaid Rent, (the “Notice”) issued on August 6, 2018, to request more time to file to dispute the Notice, to request an order to repair the rental unit, to request a rent reduction due to required repairs to the rental unit, for a monetary order for losses or money owed and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

Issues to be Decided

- Is the Tenant entitled to more time to file to dispute the Notice?
- Should the Notice issued on August 6, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

- Should the Landlord be ordered to repair the rental unit?
- Is the Tenant entitled to a rent reduction due to required repairs to the rental unit?
- Is the Tenant entitled to a monetary order for losses or money owed?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

The undisputed testimony of both parties confirmed that the tenancy began in the summer months of 2012. Rent in the amount of \$1,300.00 was due each month, and the Tenant paid the Landlord a \$650.00 security deposit and the beginning of the tenancy. Both the Tenant and the Landlord agreed that the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by posting it to the door of the rental unit on August 6, 2018.

The Tenant testified that he had been out of town working when the Landlord posted the Notice to the door and that he had to miss two days of work, so he could fly home and deal with the Notice. The Tenant testified that when he got back, he sent the Landlord the full outstanding rent, via E-transfer.

The Landlord testified that she received the full outstanding rent on August 13, 2018, and that the Tenant is now current with his rent payments.

The Tenant testified that there are repairs needed to the rental property, including; the removal of gravel in the yard, that the dishwasher was not working and there are many leaking faucets in the rental unit. The Tenant testified that he had not submitted a formal written request to the Landlord for these repairs.

The Landlord testified that she had completed all the repairs to the rental unit that the Tenant has told her about and that she would not allow her property to fall into disrepair. However, she was unaware of the repairs that the Tenant had testified to in this hearing.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord served the Notice to End Tenancy on August 6, 2018, by attaching it to the door of the Tenant's rental unit, which is an approved method of

service provided for under section 88 of the *Act*. Section 90 of the *Act* states that unless it is shown otherwise, a document served in this manner is deemed to have been received three days after the day in which the notice was posted.

When documents are considered to have been received

90 *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:*

- (a) if given or served by mail, on the 5th day after it is mailed;*
- (b) if given or served by fax, on the 3rd day after it is faxed;*
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;*
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.*

Without evidence to the contrary, I find that the Tenant was deemed to have received the Notice on August 9, 2018.

When a tenant receives a 10-Day Notice to end tenancy the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this, the notice is of no effect, as per section 46(4) of the *Act*.

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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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.

Accordingly, I find that the Tenant had until August 14, 2018, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to

dispute the Notice. In this case, I find the Tenant did pay the full outstanding rent on August 13, 2018, within five days of receiving the Notice, as allowed by the Act. Therefore, I grant the Tenant's application to cancel the Notice dated August 6, 2018, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As for the Tenant's request for an order for repairs and a rent reduction for repairs, I find that the Tenant's application regarding repairs and his request for a rent reduction is premature, as the Tenant has not provided the Landlord with a written request detailing what repairs need to be completed. Therefore, I dismiss the Tenant application, with leave to reapply, for an Order for repairs to the rental unit and a request for a rent reduction due to the repairs not being completed; only after the Tenant has provided the Landlord with a list of required repairs, and provided a reasonable amount of time for the Landlord to complete the need repairs.

In regard to the Tenant application for compensation for the loss of employment income for two days, in the amount of \$1,500.00, I must consider sections 7 and 67 of the *Act*. Which states that a party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully reviewed the testimony and documentary evidence provided by both parties, and I find that there is no evidence before me to show that the Landlord has

breached the *Act*. Therefore, I dismiss the Tenants' claim for \$1,500.00 in compensation due to the loss of two days of employment.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application. The Tenant is allowed to take a one-time deduction of \$100.00, from his next month's rent.

Conclusion

I grant the Tenant's application, and I find the 10-Day Notice dated August 6, 2018, of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: October 9, 2018

Residential Tenancy Branch