



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on August 23, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The landlord's agent (the "landlord") confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on August 28, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2012 and is currently ongoing. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 15, 2018 a 10 Day Notice to End Tenancy for unpaid rent with an effective date of August 26, 2018 (the "10 Day Notice") was posted on the tenant's door. The tenant confirmed receipt of the 10 Day Notice on August 15, 2018. The 10 Day Notice stated that the tenant failed to pay rent in the amount of \$8,961.00 that was due on August 1, 2018.

The landlord testified that the following rent is outstanding:

Date	Amount Owing
2014	\$1,440.00
2015	\$2,900.00
2016	\$1,421.00
2017	\$2,400.00
2018	\$800.00
Total	\$8,961.00

The tenant testified that she did not owe the landlord any back rent whatsoever, and that she always pays her rent on time. The tenant testified that she pays her rent in cash at the end of the month for the upcoming month. The tenant testified that the landlord has never given her any rent receipts. The landlord testified that rent receipts were sometimes given to the tenant. Neither party entered rent receipts into evidence. The tenant entered her bank statements from January 2018 to July 2018 showing cash withdrawals.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's allegation of back rent owed in the amount of \$8,961.00 and considering the tenant's testimony that she does not owe any back rent, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, or is only occasionally provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlord's failure to regularly provide receipts for cash payments made during this tenancy has significantly impaired his ability to prove that the tenant did not pay a portion of rent. The landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the tenant owed any outstanding rent. There is also no evidence before me that the landlord has previously demanded payment of outstanding rent over the past four years.

Section 46(1) of the *Act* states that 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.

I find that there is insufficient evidence to substantiate the details of the landlord's claim that rent was unpaid after the day it was due; I therefore find the 10 Day Notice of no force or effect.

As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The 10 Day Notice is of no force or effect.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 05, 2018

Residential Tenancy Branch