



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the Residential Tenancy Act (the “Act”), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 4, 2018, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issues to be Decided

- Should the 10-Day Notice be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

The testimony of both parties confirmed that the tenancy began on July 1, 2016. Rent in the amount of \$1,100.00 was due each month, and the Tenants paid the Landlord a \$550.00 security deposit and a \$550.00 pet damage deposit at the beginning of the tenancy.

The Landlord testified that the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was sent to the Tenants by Canada Post Registered mail on September 4, 2018, with an outstanding rent amount of \$1,100.00 and an outstanding utility amount of \$193.20 at the time of service.

The Tenant testified that they agreed that they paid the September 2018 rent late but that they had paid the full amount outstanding in rent and utilities on September 11, 2018. The Tenants provided a copy of the receipt for payment of the September 2018 rent and the utilities into documentary evidence.

The Landlord testified that he received the full outstanding rent and utilities on September 14, 2018.

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 September 4, 2018, by Canada Post Registered mail, 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 five days after the day in which the notice was mailed.

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 Tenants were deemed to have received the Notice on September 9, 2018.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 Tenants had until September 14, 2018, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice.

I accept the testimony of the Landlord that he received the full outstanding rent and utilities as indicated on the Notice on September 14, 2018. I find that the Tenants did pay the outstanding amount due within five days of receiving the Notice, as allowed by the Act, rendering the Notice of no effect.

Therefore, I grant the Tenants' application to cancel the Notice dated September 4, 2018, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

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

Conclusion

I grant the Tenants' application, and I find the 10-Day Notice dated September 4, 2018, of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants 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 12, 2018

Residential Tenancy Branch