



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

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 landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

SL appeared as agent for the landlord in this hearing. 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 landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice by way of posting the notice on the tenant's door on November 6, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on November 9, 2018, three days after posting.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the cost of the filing fee for this application?

Background and Evidence

This tenancy began on November 5, 2010, with monthly rent currently set at \$935.00.

The landlord issued the 10 Day Notice on November 6, 2018 to the tenant, for money owed for repairs to a door in the amount of \$332.85. The amount is disputed by the tenant, and the amount remains unpaid.

Both parties confirmed in the hearing that the tenant paid the November 2018 rent in full, and no rent is outstanding for this tenancy.

Analysis

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.

Section 26 of the *Act* requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” I accept the undisputed testimony of both parties that the tenant has paid rent as required by section 26 of the *Act*.

Although there is an ongoing dispute regarding the money owed by the tenant to the landlord for repairs, the landlord has not filed any applications regarding this dispute. As the tenant does not owe any rent, I am allowing the tenant’s application to cancel the 10 Day Notice dated November 6, 2018. This tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

As the tenant was successful in his application, I am allowing him to recover the \$100.00 filing fee for this application.

Conclusion

I allow the tenant’s application, and the 10 Day Notice is cancelled. The 10 Day Notice of November 6, 2018 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, 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: December 20, 2018

Residential Tenancy Branch