



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MT, FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 18, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 12, 2018 (the "10 Day Notice");
- a request for more time to file their late Application seeking to cancel a Notice;
- an order to suspend or restrict the Landlords right to enter; and
- recovery of the filing fee.

The Tenant S.S attended the hearing at the appointed date and time, and provided affirmed testimony. No one appeared for the Landlords. The conference call line remained open and was monitored for 30 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.S. and I were the only persons who had called into this teleconference.

At the beginning of the hearing, S.S. testified that she served the Application package and documentary evidence to the Landlords in person on December 19, 2018. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

S.S. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

I note that Section 55 of the *Residential Tenancy Act (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*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for an order to suspend or restrict the Landlords right to enter the rental unit is dismissed with leave to reapply.

Issue(s) to be Decided

1. Should the Tenants be entitled to more time to cancel the 10 Day Notice, pursuant to Section 66 of the *Act*?
2. Are the Tenants entitled to an order cancelling the 10 Day Notice dated December 12, 2018, pursuant to Section 46 of the *Act*?
3. If the Tenants are not successful in cancelling the 10 Day Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
4. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

S.S testified that the tenancy began on February 1, 2016. S.S stated that the Tenants signed a new tenancy agreement with the Landlord H.B. on August 1, 2018, which the Tenants submitted into evidence. Currently, rent in the amount of \$1,000.00 is due to be paid to the Landlords by the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$500.00.

S.S. testified that she has received a \$50.00 rent reduction from the Landlord H.B. as the Tenants have not had access to laundry services. This arrangement began on September 1, 2018. S.S. provided a letter from H.B indicating that rent was adjusted to \$950.00 each month.

S.S testified that she was served a 10 Day Notice dated December 12, 2018, in person by Landlord B.B. on December 15, 2018. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$4,000.00 which was due on December 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

S.S testified that the Tenants have paid their rent in full when due to the Landlord H.B.. S.S. provided rent receipts in support. S.S. stated that the Landlords have had a family dispute resulting in Landlord H.B. leaving the home. S.S. stated that she meets H.B. each month to pay rent in cash. S.S. indicated that she has always paid rent to H.B., who provides the Tenants with receipts confirming the rent payments.

S.S. testified that Landlord B.B. is the one who served her the 10 Day Notice and suspects that there may be a miscommunication between the Landlords. S.S. does not wish to get involved in the family dispute.

Analysis

Section 46 of the *Act* states 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 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

I find that the Landlord B.B. served the Tenants with the 10 Day Notice dated on December 12, 2018, with an effective vacancy date of December 23, 2018, by serving it in person to the Tenants on December 15, 2018. S.S. confirmed having received the notice, therefore I find the 10 Day Notice sufficiently served pursuant to Section 88 of the *Act*.

I find the Tenants disputed the 10 Day Notice on December 18, 2018, within the required time period, therefore the Tenants' Application for more time is not necessary.

S.S. testified that rent has been paid in full when due to Landlord H.B. S.S. indicated that H.B. provided her with receipts confirming such payments have been made. S.S. submitted rent payments receipts in support.

I find that the Tenants have provided sufficient evidence to demonstrate that rent has been consistently paid to Landlord H.B. I find that the Tenant has paid the rent in full and did not owe any amount of rent at the time of the 10 Day Notice being served.

Therefore, I find that the 10 Day Notice dated December 12, 2018 is not valid and is subsequently cancelled.

I order the tenancy to continue until ended in accordance with the Act.

As the Tenants have been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application, pursuant to section 72 of the Act..

Conclusion

The Tenants' Application is successful. The 10 Day Notice issued by B.B. dated December 12, 2018 is cancelled.

The tenancy will continue until ended in accordance with the Act.

As the Tenants have been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next months 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: February 13, 2019

Residential Tenancy Branch