



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46.

The "first hearing" on January 22, 2019 lasted approximately 22 minutes and the "second hearing" on February 7, 2019 lasted approximately 13 minutes.

The landlord's two agents, "landlord ES" and landlord TL ("landlord"), attended the first hearing only. At the first hearing, both the landlord and landlord ES confirmed that they had permission to speak on behalf of the landlord named in this application. No one attended the second hearing on behalf of the landlord.

The tenant's agent attended both hearings. At both hearings, the tenant's agent confirmed that he had permission to speak on behalf of the tenant named in this application, who is his son.

At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on January 22, 2019 was adjourned after the parties consented, because the landlord and landlord ES were not ready to proceed with the first hearing and requested that it be adjourned. By way of my interim decision, dated January 22, 2019, I adjourned the tenant's application to the second hearing date of February 7, 2019.

At the first hearing, I notified both parties that they would receive a copy of my interim decision and notice of reconvened hearing with the second hearing date information. The tenant's agent opted to receive it by mail, while the landlord opted to receive it by email. The tenant's agent provided me with the correct mailing address, which was not fully included in the tenant's application, and I indicated this on the interim decision. The landlord provided me with an email address for landlord ES and I reconfirmed this email address during the first hearing and indicated it on my interim decision. The interim decision and notice of reconvened hearing were emailed to the landlord by the RTB after the first hearing.

The tenant's agent said that he called into the RTB two days prior to the second hearing date, and was informed that the second hearing was occurring on February 7, 2019. He said that he did not receive a copy of the interim decision and notice of reconvened hearing. He claimed that the RTB information officer notified him that the wrong address was indicated on his application and this incorrect address was used to mail the above documents to the tenant, which was returned to the RTB as sender.

I also provided evidence directions to both parties at the first hearing and included this information in my interim decision. I asked both parties to send a copy of the 10 Day Notice to the RTB as soon as possible and prior to the second hearing date, as there was no copy on file. The landlord confirmed that he would notify the appropriate landlord agent to do so. The tenant's agent said that he would resubmit a copy in person to an RTB office by January 22, 2019, the date of this hearing, as he was unfamiliar with how to upload the evidence online to the RTB system. He said that he served a copy in person at an RTB office prior to the first hearing date but I had not received a copy of it online on the RTB system.

The landlord did not provide a copy of the 10 Day Notice online or to the RTB after the first hearing and prior to the second hearing.

The tenant's agent confirmed that he was sick and unable to provide a copy of the 10 Day Notice prior to the second hearing date, but he had a copy in front of him during the second hearing.

At the first hearing, the landlord and landlord ES confirmed receipt of the tenant's application for dispute resolution hearing package, as that is why they called into the first hearing. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's application.

At the second hearing, the tenant's agent confirmed that the tenant personally received the landlord's 10 Day Notice on December 8, 2018. He claimed that he could not read the date that the notice was signed by the landlord. He stated that the effective move-out date on the notice is December 13, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on December 8, 2018.

Issues to be Decided

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

Background and Evidence

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

The tenancy agreement indicates the following facts. This tenancy began on September 15, 2017 for a fixed term ending on September 14, 2018. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was due for this tenancy. A written tenancy agreement was signed by both parties and a copy was provided by the landlord. The tenant continues to reside in the rental unit.

The tenant's agent claimed that the tenant received the landlord's 10 Day Notice in December 2018 for unpaid rent of \$8,000.00 from September 1, 2018, as indicated on the notice. He said that no such rent amount was outstanding as the tenant paid rent of \$2,000.00 each month on time to the landlord. He questioned why the landlord waited until December 2018 to indicate that rent was outstanding from two months prior in September 2018, particularly since it had already been paid.

Analysis

In accordance with section 46(4) of the *Act*, the tenant must file his application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on December 8, 2018 and filed his application to

dispute it on December 13, 2018. Accordingly, the tenant's application is within the five day time limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord did not appear at this hearing to provide evidence. The landlord did not meet his onus of proof.

The tenant's agent provided undisputed evidence at the second hearing. He indicated that rent was paid on time to the landlord and \$8,000.00 was not outstanding in rent from September 2018.

For the above reasons, I allow the tenant's application to cancel the landlord's 10 Day Notice. The landlord's 10 Day Notice is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice. The landlord's 10 Day Notice is cancelled and of no force or effect.

The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

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 07, 2019

Residential Tenancy Branch