



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- to recover the filing fee from the landlord for the cost of this application pursuant to section 72; and
- an Order directing the landlord to comply with the *Act* pursuant to section 65.

Both parties attended the hearing with the landlord being represented by agent C.M. The tenant called the landlord's son, A.B. as a witness during the hearing. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy ("10 Day Notice") and the landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary package. All parties around found to have been duly served with all documents related to this dispute in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice?

Should the landlord be directed to comply with the *Act*?

Can the tenant recover the filing fee?

Background and Evidence

The parties did not explain when this tenancy began but agreed monthly rent was \$936.00. A security deposit of \$450.00 paid at the outset of the tenancy continues to be held by the landlord.

On January 9, 2019 the landlord served the tenant with a 10 Day Notice for Unpaid Rent. The notice alleged that the tenant had failed to pay \$7,200.00 in rent. When asked specifically which months the tenant did not pay, the landlord could not identify exact months but said the figure represented eight months of unpaid rent at \$900.00 per month.

The tenant disputed that any rent was due, arguing that he had paid rent every month in its entirety. The tenant said rent was paid in its entirety to the landlord's son, A.B. who attended the hearing as a witness for the tenant. A.B. explained he had been granted Power of Attorney for his father in 2011 and acknowledged collecting rent from the tenant. A.B. said the tenant was up-to-date on all rent payments and he had no concerns related to the tenancy. A.B. said the matter was a family dispute which had nothing to do with the tenant.

The landlord's acknowledged that rent had been paid by the tenant in its entirety to A.B.; however, the landlord and his witness alleged the landlord's son was not the true landlord and therefore rent remained unpaid. The landlord sought enforcement of the 10 Day Notice because he had received no rent. The landlord's witness highlighted a letter from a lawyer who represented the landlord. This letter dated December 4, 2018 and written to a Mr. G. directed this person to pay rent directly to the landlord and not to the landlord's son. It said, "R.B. is not authorized to receive rent payments from you in respect of the Residence...failure to make rental payments to U.B., commencing January 1, 2019 will be considered by Mr. B as non-payment of rent, pursuant to section 26 of the RTA and Mr. B reserves the right to terminate your tenancy pursuant to section 46 of the Act." The landlord's witness alleged the Power of Attorney had been rescinded in November, though she could not provide a year in which he had been rescinded.

A.B. testified that his Power of Attorney had not been rescinded and explained his father suffered from capacity issues which had led to confusion around the tenancy.

In addition to a cancellation of the landlord's 10 Day Notice, the tenant sought an Order directing the Landlord to comply with the *Act*. The tenant said the landlord had entered his unit on several occasions without providing proper reasons as is required under 28 of the *Act*. Witness A.B. acknowledged the tenant had been repeatedly subject to unlawful entries of the rental unit but said these issues were beyond his control because his father did not sufficiently understand that rights and responsibilities of both landlord and tenant.

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. The only way that a tenant can cancel this notice is by Section 46(4) which says:

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.

When a tenant has disputed a landlord's Notice to End Tenancy in accordance with the *Act*, the burden of proof related to the validity of a Notice to End Tenancy is transferred to the landlord. In this case, I find that the tenant has disputed the notice in accordance with section 46(5) of the *Act*, and that the landlord therefore had a duty to supply evidence to the hearing that rent or utilities remained unpaid after the issuance of a 10 Day Notice.

After considering the oral testimony of the parties, I find that the landlord has provided insufficient evidence that the tenant has not paid all rent and utilities due under the terms of the tenancy agreement. The parties provided conflicting testimony as to their understanding of the terms of the tenancy agreement, specifically to whom rent should be paid. The landlord's witness acknowledged rent was paid by the tenant but alleged the landlord's son had no authorization to collect rent on behalf of the landlord. No evidence was provided to support this argument. While I note the tenancy agreement signed by the parties names both the landlord and tenant present in the dispute, several pages of the tenancy agreement are missing. Furthermore the agreement is not signed or dated. I therefore place little weight on this document. The landlord's witness alleged the tenant's son was no longer the Power of Attorney for his father per a letter from the landlord's lawyer dated December 4, 2018. I dismiss this argument as the letter from

the landlord's lawyer is not addressed to the tenant named in the dispute but rather a Mr. G and it makes no mention of the Power of Attorney being rescinded.

For these reasons I find the tenant was successful in his application and this tenancy shall continue until it is ended in accordance with the *Act*.

In addition to an application cancelling the landlord's 10 Day Notice, the tenant has applied for an Order directing the landlord to comply with the *Act*. I accept the testimony of the tenant and his witness, A.B. that the landlord was prone to entering the tenant's suite without proper notice pursuant to section 29 of the *Act*. This section states as follows:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees

Failure to adhere to this order may result in future applications being brought against the landlord by the tenant.

As the tenant was successful in his application, he may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord. In place of a monetary award, I allow the tenant to withhold \$100.00 from a future rent payment on one occasion, in full satisfaction for a return of the filing fee

Conclusion

The tenant was successful in cancelling the landlord's 10 Day Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment, in satisfaction for a return of the filing fee.

The landlord is ordered to provide sufficient notice and reasons for entry to the tenant pursuant to section 29 of 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 19, 2019

Residential Tenancy Branch