



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on January 25, 2019 (the “Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2019 (the “December Notice”) and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 16, 2019 (the “January Notice”). The Tenants sought more time to file the disputes. The Tenants also sought reimbursement for the filing fee.

The Tenant appeared at the hearing with A.M. for support and the Advocate. The Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence for this Application. I addressed service of the hearing package and Tenant’s evidence and the Landlord confirmed he received these.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenants be granted more time to file the Application?
2. Should the December Notice be cancelled?
3. Should the January Notice be cancelled?

4. If the Notices are not cancelled, should the Landlord be issued an Order of Possession based on the Notices?

Background and Evidence

The Landlord submitted a written tenancy agreement on a separate file. The Tenant acknowledged receiving a copy of this and agreed to admissibility of this at this hearing.

The Tenant testified that rent is \$900.00 due on the first day of each month. The Landlord did not dispute this. The written tenancy agreement submitted states rent is \$1,500.00. The Tenant testified that rent was reduced from \$1,500.00 to \$900.00.

The December Notice states that the Tenants failed to pay \$900.00 in rent due December 01, 2018. It is addressed to the Tenants and refers to the rental unit address. It is signed and dated by the Landlord. It has an effective date of January 31, 2019.

The January Notice states that the Tenants failed to pay \$900.00 in rent due January 01, 2019. It is addressed to the Tenants and refers to the rental unit address. It is signed and dated by the Landlord. It has an effective date of January 31, 2019.

The Landlord testified that both Notices were sent by regular mail. He testified that the December Notice was sent January 11, 2019 and January Notice was sent January 16, 2019.

The Tenant testified that the Tenants received the December Notice on January 21, 2019 and January Notice on January 24, 2019.

The Tenants submitted a photo of the envelopes the Notices were received in. The Tenant submitted that the stamps on the envelopes show the Notices were mailed January 15, 2019 and January 21, 2019 not on the 11th and 16th.

The Landlord testified that he spoke to someone at the post office who advised him that the stamps on the envelopes show the date the sorting office receives the mail not the date it was sent.

The Tenant acknowledged rent was not paid by December 1st and January 1st as required. He testified that the Tenants did not have an address for the Landlord and

therefore could not send the Landlord the rent cheques for these months. He testified that the Tenants tried calling the Landlord but the Landlord did not respond. The Tenant acknowledged that he did not leave a message with the Landlord stating that the Tenants needed the Landlord's address. The Tenant testified that the Landlord's email was not working. The Tenant acknowledged that the tenancy agreement includes the Landlord's address. He testified that the Tenants could not find the tenancy agreement at the time and only found it after they received the Notices.

The Landlord took the position that the Tenant's testimony in relation to not having the Landlord's address is false. He submitted that the Tenant is only now providing an excuse for not paying rent as required. The Landlord acknowledged that the Tenants tried to reach him once or twice. He said this occurred in late January. He testified that the Tenants never said anything about needing his address. The Landlord testified that he did not return the Tenants' messages but would have if he knew they needed his address.

The Tenant testified that the Tenants sent two cheques for \$900.00 each to the Landlord by regular mail on January 22, 2019 for the outstanding rent listed in the Notices.

The Landlord agreed he received the two cheques for \$900.00 each. The Landlord did not know when he received them and said it sounds correct that they would have been sent on January 22, 2019.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") requires tenants to pay rent when it is due under the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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...

(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.

...

There is no issue that the Tenants were obligated under the tenancy agreement to pay \$900.00 in rent by December 01, 2018 and \$900.00 in rent by January 01, 2019. The Tenant did not submit that the Tenants had authority under the *Act* to withhold rent. The Tenants were required to pay rent under section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

I do not accept that the Tenants were excused from paying rent on the basis that they did not have the Landlord's address. The parties agreed the Landlord's address was on the tenancy agreement signed by the parties. The Tenant acknowledged that the Tenants had a copy of the tenancy agreement. He said the Tenants lost it and were only able to find it after they received the Notices.

A tenancy agreement is a legal document that sets out the rights and obligations of the parties to the agreement. The Tenants should have ensured they had access to the tenancy agreement when needed. Misplacing the tenancy agreement is not a valid basis for failing to pay rent. The Landlord had provided the Tenants with his address. It was the Tenants' responsibility to keep that address in a place accessible to them when needed. I do not accept that the Tenants were relieved of their obligation to pay rent by December 01, 2018 and January 01, 2019 based on their own negligence in misplacing the tenancy agreement.

Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notices pursuant to section 46(1) of the *Act*.

The Landlord testified that he sent the Notices by regular mail on January 11th and 16th. The Tenant disputed this and pointed to the date stamps on the envelopes for the Notices. The Landlord testified about what he was told in relation to the date stamps. I

place no weight on this evidence in the absence of some evidence to show the Landlord received this information from the post office. The Landlord submitted no evidence for this Application. The Landlord submitted no evidence in support of his testimony that he sent the Notices on January 11th and 16th. It is the Landlord who has the onus to prove service of the Notices. I am not satisfied that the Notices were sent January 11th and 16th.

The Tenant took the position that the Notices were sent January 15th and January 21st based on the envelopes. I find the Notices were served in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the December Notice is deemed received January 20th. The Tenant acknowledged receiving the January Notice on January 24th.

The Tenants had five days from receipt of the Notices on January 20th and 24th to pay or dispute them under section 46(4) of the *Act*.

The request for more time to file the Application is moot given my finding that the Notices were received January 20th and 24th as the Application was filed January 25th, within the five-day time limit.

The parties agreed the Tenants mailed the Landlord two cheques for the outstanding rent. The Tenant testified that he did so January 22nd. The Landlord could not say when he received the cheques. It is the Landlord who has the onus to prove the validity of the Notices. I am not satisfied based on the evidence provided that the Tenants failed to pay the outstanding rent within five days of receiving the Notices. Therefore, I am not satisfied the Notices were not cancelled pursuant to section 46(4)(a) of the *Act*.

Given I am not satisfied the Notices are valid, I cancel the Notices. The Landlord is not entitled to an Order of Possession based on the Notices. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenants are permitted to deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

The Application is granted. The request for more time to dispute the Notices is moot. The Notices are cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants are awarded reimbursement for the \$100.00 filing fee. The Tenants are permitted to deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 01, 2019

Residential Tenancy Branch