



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 24, 2019 the Application for Dispute Resolution, an Amendment to the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on January 23, 2019 were sent to the Landlord, via registered mail. In the Amendment to the Application for Dispute Resolution the Tenant applied to dispute a second Ten Day Notice to End Tenancy that had been served to her. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 22, 2019 the Tenant submitted 9 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by registered mail on February 24, 2019. The Tenant submitted Canada Post documentation that corroborates this testimony.

The Landlord stated that he did not receive the evidence the Tenant alleges was sent to him on February 24, 2019. With the consent of both parties I consulted the Canada Post website to ascertain whether the February 24, 2019 mailing was delivered to the Landlord. Prior to consulting the Canada Post website the Landlord was cautioned that his credibility may be called into question if the website indicates this evidence was served to him. He repeated that he does not recall receiving this package but if the website indicates it was delivered he would conclude that he simply forgot about it.

The website indicates that this package was delivered on February 25, 2019. Upon being advised of this information the Landlord stated that he must have received it and simply misplaced it. On the basis of the Canada Post website I find that this evidence was served to the Landlord and it was accepted as evidence for these proceedings.

The Landlord stated that he did not submit any evidence for these proceedings, although he has submitted evidence for a matter that is scheduled to be heard in April of 2019.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

After the Tenant corrected part of her testimony the Landlord asked why I was not cautioning her in regards to her credibility, given that I had previously cautioned him regarding his credibility. He was advised that I was not cautioning the Tenant on her credibility as the errors she had made did not cause me to question her credibility.

Preliminary Matter #2

The Landlord asked why this matter was not joined with his Application for Dispute Resolution, in which he applied for an Order of Possession on the basis of the same two Notices to End Tenancy for Unpaid Rent that are the subject of these proceedings.

The Landlord was advised that I do not know why these two matters were not joined, although matters are typically not joined because there is insufficient time to serve documents related to the second Application for Dispute Resolution.

Preliminary Matter #3

At the end of the hearing both parties were provided with the opportunity to make final comments and to ask questions. At this time the Landlord repeatedly asked questions about why the matters had not been joined. The Landlord was advised that if he continued to ask questions about this issue I would assume he had no additional questions and the hearing would be concluded. The Landlord continued to discuss this issue and the hearing was therefore concluded.

Issue(s) to be Decided

Should either of the two Ten Day Notices to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on March 27, 2017 and rent of \$750.00 is due by the first day of each month.

The Landlord stated that on January 11, 2019 he mailed a Ten Day Notice to End Tenancy, dated January 11, 2019, to the Tenant. The Tenant stated that she received this Notice to End Tenancy on January 18, 2019.

The Notice to End Tenancy dated January 11, 2019 declared that the rental unit must be vacated by January 31, 2019 and that rent of \$750.00 had not been paid when it was due on December 01, 2018. The Landlord stated that he received the rent for December, in full, on December 04, 2018. The Tenant stated that she mailed rent for December of 2018 to the Landlord, in full, on November 27, 2018.

The Landlord stated that on January 16, 2019 he mailed a Ten Day Notice to End Tenancy, dated January 16, 2019, to the Tenant. The Tenant stated that she received this Notice to End Tenancy in the mail, although she cannot recall the date of receipt.

The Notice to End Tenancy dated January 16, 2019 declared that the rental unit must be vacated by January 31, 2019 and that rent of \$750.00 had not been paid when it was due on January 01, 2019. The Landlord stated that he received the rent for January, in full, on January 10, 2019. The Tenant stated that she mailed rent for January of 2019 to the Landlord, in full, on December 27, 2018.

Analysis

Section 46(1) of the *Residential Tenancy Act (Act)* authorizes a landlord to 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.

On the basis of the undisputed testimony I find that the Landlord served the Tenant with two Ten Day Notices to End Tenancy for Unpaid Rent, dated January 11, 2019 and January 16, 2019, both of which were served pursuant to section 46(1) of the *Act*.

Although the Landlord and the Tenant disagree on when rent was paid for December of 2018 and January of 2019, the undisputed testimony is that the Tenant did not owe any rent on January 11, 2019 or January 16, 2019.

Section 46(4)(a) of the *Act* stipulates that a notice under this section has no effect if the Tenant pays the overdue rent within five days of received a Notice to End Tenancy pursuant to section 46 of the *Act*. As all outstanding rent had been paid in full prior to service of either of the Ten Day Notices to End Tenancy, I find that both Notices were rendered ineffective pursuant to section 46(4)(a) of the *Act*. I therefore grant the Tenant's application to set aside these two Notices to End Tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the \$100.00 paid to file this Application.

Conclusion

The two Ten Day Notices to End Tenancy for Unpaid Rent that are the subject of these proceedings are set aside. Pursuant to section 72(2) of the *Act*, I authorize the Tenant to withhold \$100.00 from one rent payment in compensation for the fee paid to file this Application for Dispute Resolution.

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: March 08, 2019

Residential Tenancy Branch