



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*, and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord D.N. spoke on behalf of both the landlords.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application and evidence, and the tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter,

where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of the issue currently under dispute at this time:

1. The tenant agreed to pay the landlord \$1,456.00 in five (5) monthly payments of \$291.20 to the landlord beginning April 1, 2019. The landlord is provided with a monetary order for this amount, enforceable only in the event that the tenant fails to abide by the terms of this settlement to make full payment by no later than August 2, 2019.
2. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's application for dispute resolution filed on February 1, 2019, and the landlord's 10 Day Notice to End Tenancy dated February 2, 2019. As such, the tenant's application is dismissed in its entirety, and the landlord's 10 Day Notice is cancelled and is of no force or effect.
3. The parties agreed to the terms of this settlement free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.

Conclusion

The tenant agreed to pay the landlord \$1,456.00 in five (5) monthly payments of \$291.20 to the landlord beginning April 1, 2019. To give effect to the settlement reached between the parties, I issue to the landlord the attached Monetary Order in the amount of \$1,456.00 to be served on the tenant by the landlord **ONLY** if the tenant fails to pay the landlord per the terms of the settlement.

Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. If the tenant only makes a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

The tenant's application for dispute resolution dated February 1, 2019 is dismissed in its entirety.

The landlord's 10 Day Notice to End Tenancy dated February 2, 2019 is cancelled and of no force or effect.

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 19, 2019

Residential Tenancy Branch