



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, RR, FFT

This hearing dealt with the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 30, 2019 ("10 Day Notice"), for regular repairs to the unit, site or property, for a rent reduction and to recover the cost of the filing fee.

The tenant NP ("tenant") attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The tenant testified that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail and mailed to the landlord's service address on April 12, 2019. The tenant provided a registered mail tracking number, which has been included on the cover page of this decision for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was returned to the sender as "unclaimed". Section 90 of the *Act*, states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the landlord was deemed served with the Notice of Hearing, application and documentary evidence as of April 17, 2019, which is five days after the registered mail package was mailed by the tenants to the landlord.

As I find the landlord was sufficiently served in accordance with the *Act* and did not attend the hearing, I find this matter is unopposed by the landlord.

The tenant provided affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. The hearing process was explained. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to cancel the 10 Day Notice and the tenants’ application to recover the cost of the filing fee at this proceeding. The balance of the tenants’ application is dismissed, with leave to re-apply.

The tenant confirmed their email address at the outset of the hearing. The tenant also confirmed their understanding that the decision would be emailed to the tenants and sent by regular mail to the landlord.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Are the tenants entitled to the recovery of the filing fee under the *Act*?

Background and Evidence

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice was dated March 30, 2019 and indicates that the landlord posted it to the tenants’ door. The tenant stated that they received the 10 Day Notice on April 4, 2019, which is five days after it was posted by the landlord. The tenants applied to dispute the 10 Day Notice on April 5, 2019. The effective vacancy date listed on the 10 Day Notice was April 10, 2019. The amount listed as owing on the 10 Day Notice was \$2,750.00 as of February 31, 2019. I note that February only has 28 days, which I find results in the landlord providing an incorrect date on the 10 Day Notice.

The tenants provided to e-transfer receipts to support that \$2,500.00 was paid on March 1, 2019, and another \$250.00 was paid on March 2, 2019. The tenants claims that no rent is owing February, March, April or May of 2019 and the tenants continue to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(4) of the *Act* states that within 5 days after receiving a 10 Day Notice the tenant may pay the overdue amount in which case the 10 Day Notice **is of no effect**. In the matter before me, I accept the tenant's undisputed testimony that the tenants paid March 2019 rent in two installments as indicated above and that by March 2, 2019, the March 2019 rent was paid, which I find renders the 10 Day Notice of no force or effect.

As the tenants' application had merit, I grant the tenants the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. **I authorize** the tenants to deduct \$100.00 from June 2019 rent on a one-time rent reduction basis in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The 10 Day Notice dated March 30, 2019 is of no force or effect.

The tenants' application is successful. The tenants have been authorized under section 67 and 72 of the *Act* to deduct \$100.00 from June 2019 rent on a one-time rent reduction basis in full satisfaction of the recovery of the cost of the filing fee.

The tenancy shall continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 17, 2019

Residential Tenancy Branch