



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 tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Part way through settlement negotiations the landlord hung up. I kept the hearing line open for a further 10 minutes and the landlord did not call back into the hearing. The landlord did not provide full submissions on why the 10 Day Notice to End Tenancy for Unpaid Rent was issued.

The tenants testified that the landlord was served the notice of dispute resolution package by registered mail on May 17, 2019. The tenants provided the Canada Post Tracking Number to confirm this registered mailing. I find that the landlord was deemed served with this package on May 22, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?

2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants and landlord's claims and my findings are set out below.

The tenants provided the following undisputed testimony. This tenancy began in 2014 and is currently ongoing. Monthly rent in the amount of \$1,240.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants to the landlord.

The tenants testified that on May 14, 2019 they were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent, with an effective date of May 24, 2019 (the "10 Day Notice").

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As the landlord hung up during settlement negotiations and did not provide full submissions on why the 10 Day Notice was issued, I find that he has failed to establish, on a balance of probabilities, that he had cause to end the tenancy under the *Act*. As a

result, the 10 Day Notice is cancelled, and the tenancy continues in full force and effect until it is ended in accordance with the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

I issue a Monetary Order to the tenants in the amount of \$100.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 28, 2019

Residential Tenancy Branch