



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YALE MANOR LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), and/or tenancy agreement.

The Tenant was present for the teleconference hearing and was affirmed to be truthful in her testimony. No one called in for the Landlord during the approximately 11 minutes that the phone line remained open. The Tenant provided affirmed testimony that she served the Landlord with the Notice of Dispute Resolution Proceeding package by registered mail. The Tenant was unable to locate the registered mail tracking information but stated that she sent the package on April 24, 2019 and had confirmed online that the package had been delivered and signed for. The Tenant stated that the mail was sent to the Landlord at the mailing address noted on the 10 Day Notice.

I accept the affirmed testimony of the Tenant that the Landlord was served by registered mail and therefore find that the Landlord was duly served in accordance with Sections 88 and 89 of the *Act*.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the *Act, Regulation* and/or tenancy agreement?

Background and Evidence

The Tenant provided undisputed testimony on the tenancy. The tenancy began on November 15, 2018. Monthly rent is \$700.00 and a security deposit of \$350.00 was paid at the outset of the tenancy.

The 10 Day Notice, dated April 16, 2019, was submitted into evidence and states that it was posted on the Tenant's door on April 16, 2019. The Tenant stated that she received the notice a few days after this.

The 10 Day Notice states that \$1,400.00 was unpaid as due on April 1, 2019 and notes that this includes \$700.00 for March 2019 and \$700.00 for April 2019.

The Tenant stated that she did not pay rent for March or April 2019. However, she stated her belief that a family member paid the rent on her behalf and she noted that she saw the rent receipts for the payments.

Regarding the Tenant's application for the Landlord to comply, the Tenant stated that she has not been provided a key to the mailbox and has therefore been unable to retrieve her mail. She stated that she has spoken to the Landlord about this and was told on two occasions that a mail key would be provided.

The Tenant stated that she got tired of asking for the key over and over and that there has been no recent communication with the Landlord regarding the key.

Analysis

Section 46(4) of the *Act* states that a tenant has 5 days in which to dispute a 10 Day Notice. The notice was posted on the Tenant's door on April 16, 2019 and in the absence of information to confirm when it was received, I refer to the deeming provisions of Section 90 of the *Act* which state that a notice served in this manner is deemed served 3 days after posting.

Accordingly, I find that the Tenant is deemed to have received the notice on April 19, 2019. As the Tenant applied for Dispute Resolution on April 23, 2019, I find that she

applied within the time allowable under the *Act*. Therefore, the matter before me is whether the 10 Day Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

As the Tenant provided testimony that brought into question the validity of the 10 Day Notice, and in the absence of any testimony or evidence from the Landlord, I find that I am unable to establish whether the 10 Day Notice is valid.

Therefore, the 10 Day Notice dated April 16, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Tenant's claim for the Landlord to comply, I accept the testimony of the Tenant that she was not provided a key to her mailbox despite several requests. I find it unreasonable that the Tenant would be unable to access her mail and therefore order the Landlord to provide a key to the mailbox within one week of receiving this decision.

Conclusion

The 10 Day Notice dated April 16, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Upon receipt of this decision, the Landlord must provide a mailbox key to the Tenant within 7 days.

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 03, 2019

Residential Tenancy Branch