



Dispute Resolution Services

Page: 1

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 landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord was primarily represented by their agent. The co-tenant KG primarily spoke on behalf of the tenants.

As both parties were present service of documents was confirmed. The landlord testified that they served their 10 Day Notice of April 12, 2019 by registered mail sent on or about that date. The tenant confirmed receipt of the notice. Based on the testimonies and in accordance with sections 88, 89 and 90 of the Act, I find that the tenants were served with the 10 Day Notice on April 17, 2019, five days after mailing.

The landlord confirmed receipt of the tenant's application for dispute resolution dated April 23, 2019 and evidence. I find that the landlord was duly served with the tenant's materials in accordance with sections 88 and 89 of the Act.

The parties gave evidence that the landlord had issued subsequent 10 Day Notices dated May 3, 2019 which were received by the tenants on May 13, 2019. The tenants filed amendments to their application on May 15, 2019 disputing those notices. Based

on the testimonies I find that the parties were each served with the additional Notices and amendment in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This tenancy began in December 2016. The monthly rent is \$3,600.00 payable on the first of each month.

The landlord submits that the tenant failed to pay rent in full from February 2019 onwards. The landlord testified that there was a rental arrear of \$10,800.00 as at April 12, 2019 when the first 10 Day Notice was issued. The landlord said that the tenants have failed to pay rent since that date and the current rental arrears is \$18,000.00 as at the date of the hearing. The landlord's witness, who is employed by the property management company administering this tenancy, testified that they have not been provided with post-dated cheques by the tenants as required. The landlord did not submit any documentary evidence.

The tenant disputes that there was an arrear at the time the 10 Day Notice of April 12, 2019 was issued. The tenant testified that they have provided post-dated cheques to the landlord as they have done throughout the tenancy. The tenant said that there have been previous attempts by the landlord to end this tenancy for various reasons under the file numbers on the first page of this decision.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, I find that the tenants are deemed to have been served with the 10 Day Notice on April 17, 2019 and filed their application on April 23, 2019, outside of the 5 day limit under the *Act*.

A notice issued under section 46 must comply with the form and content requirements of section 52. While the 10 Day Notice is signed and dated by the landlord the parties disagree that the amount of rental arrears indicated on the notice is correct. The landlord and their witness testified that there were conversations where the tenants agreed that there was rent owing in the amount indicated on the notice. The tenant disputes that any such admission was made and instead submit that they provided the landlord with post-dated cheques which the landlord has neglected to use. Neither party provided documentary evidence in support of their respective position.

I find that in the absence of documentary evidence to support that there is a rental arrear the landlord has failed to establish that the grounds for ending this tenancy. A landlord is in the business of accepting payment for accommodation and it is reasonable to expect, especially in the present case where a property management company is involved, that there would be some written records. The landlord failed to submit any documentary evidence. I find the testimony of the landlord and their witness to be insufficient to establish that there are grounds for this tenancy to end. I find the landlord's submissions to be unpersuasive. Furthermore, I note that the landlord has attempted to end this tenancy for reasons other than non-payment of rent in the past giving rise to some doubts about their present submissions.

While I find that the tenants did not file their application for dispute resolution within the timeline set out in the Act, I find that I am not satisfied that any of the 10 Day Notices satisfy the form and content requirements of section 52 as the landlord has failed to establish the grounds for ending the tenancy. Consequently, I dismiss the tenants' application but decline to issue an Order of Possession.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 7, 2019

Residential Tenancy Branch