



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On May 21, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by registered mail on May 25, 2019 and the Landlord confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that he served the Landlord with his Amendment by hand on June 4, 2019 and the Landlord confirmed that he received this. Based on this undisputed evidence, I am satisfied that the Landlord was served with the Amendment.

The Tenant advised that he served the Landlord with his evidence by hand on June 14, 2019 and the Landlord confirmed this service as well. As this service complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

The Landlord advised that he served the Tenant with his evidence by hand on June 17, 2019 and the Tenant confirmed this service. However, the Landlord served video evidence and did not confirm that the Tenant had the applicable playback device to view

this digital evidence, as per Rule 3.10.5 of the Rules of Procedure. As this service complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision. However, as the Tenant was not able to view the video evidence, I have excluded this evidence and will not consider it when rendering this decision. The Landlord was still permitted to speak to this video evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 15, 2012 and that rent was currently established at \$1,165.00 per month, due on the first of each month. A security deposit of \$525.00 was paid.

The Landlord advised that the Tenant did not pay rent for March, April, or May 2019 and as of May 1, 2019, the Tenant is in arrears \$3,495.00. He stated that he served the Notice to the Tenant by hand on May 16, 2019 at 1:09 PM. The Notice indicated that the effective end date of the Notice was May 26, 2019. He advised that the Tenant paid him the arrears in full on May 21, 2019 at 2:00 PM and consequently, has paid rent outside of the five-day time frame to cancel the Notice.

The Tenant confirmed that paid the outstanding rent arrears on May 21, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Based on the parties' affirmed testimony, the Tenant received the Notice on May 16, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*"

As the fifth day fell on Tuesday May 21, 2019, the Tenant must have paid the rent in full or disputed the Notice by that date at the latest. The undisputed evidence is that the Tenant paid the rent in full and made this Application on May 21, 2019. Despite the Landlord's assertion that the Tenant paid rent late due to the time it was paid, I find that the Tenant has five, whole days to pay the rent. Therefore, the Tenant would have until the end of the fifth day to pay the arrears to cancel the Notice.

As I am satisfied that the rent arrears were paid in full within five days of the Tenant receiving the Notice, I am satisfied that the Notice of May 16, 2019 is cancelled and of no force or effect.

As the Tenant was successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As a result, he may withhold this amount from a future month's rent.

Conclusion

The onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the rent arrears has been paid in full in accordance with the *Act*, I am satisfied that the Landlord has not properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice, and I find that the Notice of May 16, 2019 is of no force and 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: July 5, 2019

Residential Tenancy Branch