



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution, filed on June 19, 2019, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 8, 2019 (the "Notice") as well as recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on July 15, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation based on the Notice?

2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows: the tenancy began February 1, 2018 and monthly rent is \$1,200.00 payable on the 1st of the month. A copy of the residential tenancy agreement was provided in evidence confirming this information.

The Landlord stated that the Tenant stopped payment on his June 2019 rent cheque such that the cheque was not honoured. The Landlord further stated that when he discovered that the cheque was not honoured he immediately called and texted the Tenant to ask what happened. He stated that he tried for two or three days to contact the Tenant without success.

On June 8, 2019 the Landlord issued the Notice. The Notice indicated that rent of \$1,090.00 was outstanding as of June 1, 2019. The effective date of the Notice was June 23, 2019. The Landlord confirmed that the sum of \$1,090.00 was outstanding for rent, rather than \$1,200.00, as the Tenant was to be credited \$110.00 from a previous hearing (the file number for that matter is included on the unpublished cover page of this my Decision).

The Landlord testified that the Notice was served by regular mail sent on June 8, 2019; a copy of the envelope containing the Notice was provided in evidence.

The Landlord confirmed that he lives in the same building as the Tenant and shares a mailbox. He also stated that the letter containing the Notice was in the mailbox for several days and was not retrieved by the Tenant. He testified that he called the Tenant to tell the Tenant about the mail, following which, sometime after June 27, 2019 the envelope was no longer in the mailbox.

The Landlord stated that the June rent was paid on July 1, 2019. The Landlord further stated that the Tenant paid the July rent on July 5, 2019.

The Landlord stated that the Tenant initially informed him that the cheque was not honoured due to a banking error. Contrary to this information, the Landlord discovered that the Tenant “blocked his cheques” many years ago such that the rent cheque was not honoured.

In response to the Landlord's testimony and evidence the Tenant testified as follows. He stated that on May 31, 2019 he went to his bank because he wanted to travel to the United States; at this time he also checked his account as he wanted to ensure his rent for June would be covered. He found that there was \$84.00 less than \$1,200.00 required, and as such he deposited \$100.00 to make sure there were sufficient funds in the account to cover his June rent.

Following his attendance at the bank, the Tenant then traveled to the United States. On June 7, 2019 he checked his account and discovered that the rent payment was not deducted. The Tenant then sent a text to the Landlord regarding this (a copy of which was in evidence).

The Tenant stated that in 2013 he lost some of his cheques and then put a stop payment on several cheques. The Tenant forgot that he had done this and when he found the cheques he used them not realizing they were the ones he had stopped years before. When the Tenant discovered this, he suggested to the Landlord that he deposit the rent cheque for \$1,200.00 (which had been provided to the Landlord prior to the previous hearing) as he did not want to be late paying his rent.

The Tenant returned from the United States on June 27, 2019 and he was informed that the cheque was returned and the Landlord had not received payment. The Tenant stated that he went to the bank to resolve this issue. The Tenant denied receiving the Notice in the mail.

In reply to the Tenant's submissions, the Landlord conceded that he was aware the Tenant was out of country at the time the Notice was mailed.

The Landlord also stated that this was not a banking error; rather, the Tenant forgot he stopped payment on his cheques in 2013. The Landlord also stated that this is an example of the Tenant not being honest, as was his use of a letter from the bank manager which the Landlord claimed the Tenant is not permitted to use.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find as follows.

Ending a tenancy is a significant request and must only be done so in accordance with the *Residential Tenancy Act*. Section 46 of the *Act* allows a Landlord to end a tenancy for non-payment of rent and reads as follows:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 46(4) provides that a Tenant has five days after receipt of the Notice in which to apply to dispute the Notice or to pay the outstanding rent.

I find that the Tenant was served the Notice by regular mail. Although section 90 of the *Act* provides that documents served by regular mail are *deemed* served five days later, I

accept the Tenant's evidence that he was away until June 27, 2019 and as such did not receive the mail five days after it was mailed. The Landlord conceded that the mail was in the mailbox at least until June 27, 2019. Based on this evidence, and pursuant to section 46(4), I find that the Tenant received the Notice on June 27, 2019

Hearings before the branch are governed by the *Residential Tenancy Branch Policy Guidelines*. *Guideline 12—Service Provisions* provides in part as follows:

12. SERVICE OF DOCUMENTS AND TIME TO RESPOND

Generally, the object of service of documents is to give notice to the person who has been served that an action has been or will be taken against them. There is substantial case law that has held that the purpose of service is fulfilled once notice has been received.¹⁰

Deeming provisions should not be relied on to calculate time to respond to service of a document. The date a person receives documents is what is used to calculate time. The Legislation contains provisions for the time frames within which a person must act upon having received documents. For example, s. 47 allows a landlord to end a tenancy by giving notice to the tenant. S. 47 (4) states that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. Therefore, a tenant must file their application for dispute resolution within 10 days of receipt of the notice.

At the dispute resolution hearing, if service or the time frame for having responded is in dispute, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine the date of service and the calculation of time a respondent had for responding. S. 71 (2)(b) gives an arbitrator the authority to order that a document has been sufficiently served for the purposes of the Act on a date the arbitrator specifies, upon consideration of procedural fairness and prejudice to the affected party.

I therefore find, pursuant to section 71(2)(b) of the *Act* that the Tenant was sufficiently served the Notice as of June 27, 2019.

The parties agreed that the Tenant paid the outstanding rent on July 1, 2019. As such, I find that the Tenant paid the rent within the five days of receipt of the Notice as required by section 46(4) of the *Act*. Consequently, and pursuant to section 46(4)(a), I find the Notice is of no force and effect. I therefore dismiss the Landlord's request for an Order of Possession.

As the Tenant paid the outstanding rent, the Landlord's request for monetary compensation is also dismissed.

Having been unsuccessful in this application the Landlord's request to recover the filing fee is similarly dismissed.

The Tenant is reminded that rent is payable when it is due under the tenancy agreement. In this case rent is due on the 1st of each month. It is the Tenant's responsibility to pay rent; it is not the Landlord's responsibility to collect rent. Further, a cheque which is not honoured does not constitute payment of rent. It is the Tenant's responsibility to ensure that payment is received by the Landlord.

Notably, the Tenant paid the July rent on July 5, 2019. The Tenant is further reminded that repeated late payment of rent may constitute cause to end a tenancy pursuant to section 47 of the *Act*.

Conclusion

The Tenant paid the outstanding rent within five days of receipt of the Notice such that the Notice is of no force and effect. The Landlord's request for an Order of Possession is dismissed. The Landlord's request for monetary compensation based for unpaid rent and recovery of the filing fee is dismissed.

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 17, 2019

Residential Tenancy Branch