



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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, JB indicated that she was also a landlord, and was not named in the original application. As neither party was opposed, the application was amended to include JB as a named landlord.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application". In accordance with section 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application..

The tenant confirmed receipt of the 10 Day Notice on June 8, 2019. Accordingly, I find that the 10 Day Notice was served in accordance with the *Act*.

Preliminary Issue – Landlord's Evidence

The tenant testified in the hearing that he did not receive the landlords' evidence package. The landlords testified that the tenant was served the package on July 27, 2019 by way of posting the package on the tenant's door. In accordance with sections

88 and 90, the package is deemed received 3 days after posting, on July 30, 2019. The tenant disputes that any documents were posted on his door.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first

In accordance with rule 3.15 and the definition of days, the last day for the landlords to file and serve evidence for this hearing was on July 29, 2019.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, although the landlords testified that they had served the tenant with their evidence package, the tenant denies that he was ever served. The landlord was unable to call the witnesses in the hearing who were present for the service of the documents. In the absence of sufficient evidence to support that the evidence was served in accordance with section 88 of the *Act*, the landlords' evidence package will be excluded for the purposes of this hearing.

Preliminary Issue – Tenant's Evidence

The tenant testified that the landlords were served with his evidence package by way of registered mail on July 23, 2019. The tenant provided a tracking number. In accordance with sections 88 and 90 of the *Act*, the package is deemed received 5 days after mailing, on July 28, 2019. The landlords testified that they have not received any packages.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the tenant to file and serve evidence as part of their application was July 22, 2019.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlords testified that they have not received any evidence from the tenant. As I find that the tenant's evidence package was not served within the prescribed timelines under Rule 3.14, and as I am not satisfied that the landlords have had a chance to review the evidentiary materials, I exercise my discretion to exclude the tenant's evidence package.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed-term tenancy began on February 9, 2019. The monthly rent is set at \$2,325.00, payable on the first of the month. The tenant paid a security deposit in the amount of \$1,162.50, which the landlords still hold.

The landlords testified that they had served the tenant with a 10 Day Notice on June 8, 2019 as the tenant has failed to pay any rent for June 2019. Since the 10 Day Notice was issued, the tenant has not paid any rent. As neither party had submitted a copy of the main page of the 10 Day Notice, the landlords were asked to confirm the details of the 10 Day Notice in the hearing, including the effective date on the 10 Day Notice. The

landlords were unable to confirm the effective date indicated on the 10 Day Notice, but believe it to be 10 days after service, on June 18, 2019.

The tenant does not dispute that he has not paid any rent for the months of June, July, and August 2019. The tenant testified that he had withheld the rent as the landlords have failed to adequately address the issue of the ant infestation in the home. The tenant testified that the ant problem has increased to the extent that the ants are now everywhere. The landlords are seeking an Order of Possession as they had never agreed to any rent reductions, and the tenant has failed to pay rent as required by the tenancy agreement and *Act*.

Analysis

Section 26(1) of the *Act* requires the tenant to pay rent when due under the tenancy agreement, “whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent”.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

As neither party submitted a copy of the main page of the 10 Day Notice for this hearing, I am unable to verify that the 10 Day Notice is valid and complies with section 52 of the *Act*. On this basis, I allow the tenant's application to cancel the 10 Day Notice dated June 8, 2019. This tenancy will continue until ended in accordance with the *Act* and tenancy agreement. I do, however, remind the tenant of his obligations under

section 26 of the *Act* as stated above. Failure to do so could result in the issuance of another 10 Day Notice or a 1 Month Notice for repeated late rent payments by the landlords as allowed under the *Act*.

I allow the tenant to recover half of the filing fee for this application. I allow the tenant to implement this monetary award of \$50.00 by reducing a future monthly rent payment by that amount.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice, dated June 8, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to recover half of the filing fee for this application. I allow the tenant to implement this monetary award of \$50.00 by reducing a future monthly rent payment by that amount.

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: August 7, 2019

Residential Tenancy Branch