



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

CNR, FFT

Dispute Codes

Introduction

On July 4, 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*.

The Tenant attended the hearing. A.M. attended the hearing as well, as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by registered mail on or around July 11, 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 and evidence package.

A.M. advised that they served the Tenant with their evidence by posting it to the Tenant's door on July 17, 2019 and the Tenant confirmed receipt of this evidence. 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.

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.

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 July 1, 2019 and that rent was currently established at \$1,570.00 per month, due on the first day of each month. A security deposit of \$785.00 was paid.

A.M. advised that the Tenant paid rent for July 2019, but his payment was accidentally posted to the previous tenant's account and the Notice was subsequently served to the Tenant in error.

The Tenant confirmed that he had paid the July 2019 rent, prior to the Notice being served.

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 after having already paid the rent in full. As I am satisfied that the rent was paid in full on or before the date that rent was due, I am satisfied that the Notice of July 2, 2019 was served prematurely. Ultimately, I find that the Notice 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

As the rent has been paid in full and in accordance with the *Act*, I am not satisfied of the validity of the Notice. I find that the Notice of July 2, 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: September 3, 2019

Residential Tenancy Branch