



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FFT, MT, FFL, OPRM-DR

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 "Ten-Day Notice") pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- A request for more time to cancel the One Month Notice under section 66; and,
- authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. However, the tenant testified that they did not receive the landlord's amendment to his application for dispute resolution. The landlord testified that he sent the amendment to the tenant by registered mail on August 13, 2019. Based on the landlord's testimony, I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's Ten-Day Notice pursuant to section 46?

Are the tenants entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to an Order of Possession pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties testified that the tenancy agreement stated that the monthly rent was \$2,500.00, payable on the first day of each month. However, the tenant argued that the parties had a long-standing practice wherein the rent payments were submitted at various dates each month.

The landlord issued One Month Notice on July 4, 2019 based upon a claim that the tenants were repeatedly late paying rent. The landlord testified that the notice was posted on the tenants' door and the tenants acknowledged receiving it.

The landlord issued a Ten-Day Notice on July 21, 2019 claiming unpaid rent of \$6,500.00 as of July 31, 2019. The landlord filed an amendment on August 14, 2019, , claiming unpaid rent of \$11,500.00.

The parties both agree that the tenants have fully paid all rent arrears, and the September 2019 rent, prior to this hearing. The landlord acknowledged receiving these payments as rent payments and not for use and occupancy only.

Analysis

In this matter, the landlord acknowledged receiving rent payments after issuing the notices to end tenancy. *Residential Tenancy Policy Guideline No.11* states the following:

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

In this matter, the landlord acknowledged receipt of rent after the effective date of a notice to end tenancy. The landlord an amendment on August 14, 2019, after the effective of the Ten-day Notice, claiming unpaid rent of \$11,500.00. However, the landlord acknowledged the entirety of those rent arrears, and the rent owing for September 2019 had been fully paid by the tenant to the landlord by the date of the hearing.

Furthermore, the landlord specifically testified that these payments were accepted from the tenants as payments of rent, not as payments for use and occupancy. As such, based upon the conduct of the landlord in accepting rent payments after the effective date of the Ten-Day Notice, I find that the intent of the parties was to reinstate the tenancy. Pursuant to *Residential Tenancy Policy Guideline No.11*, I find that this intent to reinstate to tenancy creates a waiver of the landlord's right to enforce the notice to end tenancies.

For the forgoing reasons, I grant the tenant's application to cancel the landlord's One Month Notice and the landlord's Ten-Day Notice. The Ten-Day Notice and the One Month Notice are of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in this matter, the tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

Based upon the forgoing reasons, the landlord's application is dismissed.

Conclusion

I grant the tenant's application to cancel the Ten-Day Notice and the One Month Notice. The Ten-Day Notice and the One Month Notice is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

The landlord's application 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: September 24, 2019

Residential Tenancy Branch