



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, OLC, MNDCT, PSF, RR, FFT

Introduction

On August 26, 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”), seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking an Order to set conditions on the Landlord’s right to enter the rental unit pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking provision of services or facilities pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of 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 the Notice of Hearing package by registered mail on August 27, 2019 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

Both the Tenant and the Landlord advised that neither of them submitted any evidence for consideration on this file.

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 Tenant’s Application with respect to the

Notice, 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.

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 Landlord's 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 recovery of the filing fee?

Background, Evidence, and Analysis

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 August 1, 2019 and rent was established at \$1,250.00 per month, plus half of the utilities, due on the first of day each month. A security deposit of \$625.00 was paid.

The Landlord advised that the Tenant was served the Notice on August 23, 2019 by hand and the Tenant confirmed that he received this Notice. The effective end date of the tenancy was noted as September 3, 2019. She advised that the Tenant paid the security deposit on July 12, 2019 but he did not pay rent on August 1, 2019. When she asked him for the rent, he said he would pay it, but he was waiting for his security deposit to be paid to him from his previous tenancy. However, he did not pay the rent for August 2019, so she served the Notice to him. She advised that the Tenant did not pay September or October 2019 rent either.

The Tenant advised that he paid August 2019 rent in cash and he received a receipt for this payment. However, he advised that the Landlord entered his suite illegally and stole the receipt. He alleges that he has a text confirming that he would meet the Landlord on August 1, 2019 to pay the rent. He also stated that he paid the Landlord for September and October 2019 rent, that he paid this in cash, that he did not get receipts, and that he would go upstairs to pay the Landlord directly. He stated that he changed the locks to the rental unit after the Landlord stole his rent receipt.

The Landlord advised that she scheduled to have a witness with her on August 31 and September 1, 2019 and on September 30 and October 1, 2019 to spend the entirety of these days with her as she knew the Tenant would claim that he paid the rent. However, she stated that she did not stay at home for these days. She then changed her story and stated that her roommate was home on August 31 and September 1, 2019, with two witnesses, and the Tenant did not ever stop by to pay the rent. As well, the Landlord stated that she stayed at her friend's place on September 30 and October 1, 2019, but her roommate was home to collect rent if the Tenant wanted to pay it, but the Tenant never paid the rent. She advised that she brought in a locksmith on September 20, 2019 to change the locks and she attempted to provide a key to the Tenant; however, he was not around and he did not ask for a key.

The Tenant stated that he does not know when the locks were changed as he has not been to the rental unit in September, but he still has his belongings in the rental unit. He submitted that the Landlord has also cut off the power and water to the rental unit.

The Landlord advised that the Tenant has not been on the property since September 11, 2019 according to her security cameras. As well, she stated that the Tenant has power in the rental unit as the lights have been on since this date. Finally, she stated that the water shut off valve is in the rental unit and she has no access to it.

The Landlord did not submit a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by the Landlord as it is essential to the matter at hand. A copy of this Notice was provided by fax after the hearing concluded.

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 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

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.

The undisputed evidence before me is that the Tenant was served the Notice on August 23, 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 Wednesday August 28, 2019, the Tenant must have paid the rent in full or made his Application by this date. Both parties have provided wildly differing accounts of the events during this tenancy and neither party has submitted any evidence to support their positions. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

While the Tenant alleges that he paid the rent in full when the tenancy started, he has provided no evidence to prove this and alleges that the Landlord went into the rental unit and stole the receipt that he was issued. When he was questioned how the Landlord would know where this rent receipt was kept, he stated that she was there in the rental unit when he received the receipt. I found this suggested event to be unlikely, dubious, and not reasonable. Furthermore, while he acknowledged that the locks were changed in September, he claimed to have paid rent for September and October as well, but he did not get any receipts for payment and he did not have any proof that he paid rent for these months. Based on his claim that his August rent receipt was stolen, and given the unusual circumstances of being locked out in September and of the alleged power and water being shut off, I find it illogical that the Tenant would continue to pay the rent in cash without documenting this in some manner to protect himself. For these reasons, I am skeptical of the credibility of the Tenant and I am doubtful of the reliability or truthfulness of his submissions. Consequently, I do not accept the testimony of the Tenant that he did pay the rent as alleged.

On the other hand, the Landlord claimed that the Tenant did not pay August rent at the start of the tenancy and she waited until August 23, 2019 to serve the Notice because the Tenant kept telling her that he would pay the rent. While she claimed to have made plans to have a witness with her all day on the last day of August and first day of September and on the last day of September and the first day of October, I find it highly questionable and unlikely that there were plans made for someone to be by her side for 48 straight hours in the event that the Tenant may pay her the rent. Furthermore, she provided contradictory testimony about her whereabouts on these days. Moreover, if she was not at her place of residence, it is not clear to me how she would expect the Tenant to pay her the rent. In addition, I do not understand why she would formulate a plan and expect the rent to be paid for September or October given her allegation that August rent was never paid in the first place. For these reasons, I am also skeptical of the credibility of the Landlord and I am doubtful of the reliability or truthfulness of her submissions. Consequently, I do not accept the testimony of the Landlord that the Tenant did not pay the rent as alleged.

Given the contradictory testimony and positions of the parties, I must turn to a determination of the credibility of the parties. I have considered the parties' testimonies and their demeanour as well as whether it is consistent with how a reasonable person would behave under similar circumstances. However, when considering the totality of the testimony provided, I find the likeliness of both parties' accounts to be equally not credible and suspicious, and I am doubtful of the truthfulness of either party. Given that

there has been no evidence submitted by either party on this matter, and given that the Landlord bears the onus to prove the validity of the Notice, I find that the Landlord has failed to provide any compelling testimony or evidence that the Tenant has not paid rent. As such, I am not satisfied of the validity of the Notice and as a result, I find that the Notice of August 23, 2019 is cancelled and of no force or effect.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid rent of August 23, 2019 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: October 23, 2019

Residential Tenancy Branch