



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent served on October 1, 2019 ("10 Day Notice"); and to recover the cost of her \$100.00 Application filing fee.

The Tenant, the Landlord, and counsel for the Landlord ("Counsel") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

During the hearing, I had to caution the Landlord and his Counsel to refrain from making demeaning comments to and about the Tenant. This and evidence noted below raised questions in my mind about the credibility and reliability of the Landlord's evidence before me. However, I have considered all the evidence before me that met the requirements of the Act and the RTB Rules.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated several matters of dispute on her initial Application, the most urgent of which was the application to set aside a 10 Day Notice. The Tenant amended the claims in her Application, withdrawing everything except the application to set aside a 10 Day Notice and recovery of the \$100.00 Application filing fee. The Landlord argued that the Tenant did not apply to amend her Application on time; however, I would have severed the other claims, anyway, as they were not sufficiently related to be determined in this proceeding. Therefore, based on Rule 2.3, I will consider only the Tenant's request to set aside the 10 Day Notice and the recovery of the Application filing fee at this proceeding. The Tenant's other claims are dismissed, with leave to re-apply.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord eligible for an Order of Possession?
- Is the Tenant entitled to Recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2010, with a monthly rent of \$1,000.00, which rose to the current rent of \$1,200.00 per month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$490.00, and no pet damage deposit. The Parties agreed that the tenancy agreement states that rent is "...payable in full on/before the last day of every month, applied to the first (1st) day of the following month in Cash or by certified cheque." However, the Parties agreed that the Landlord has allowed the Tenant to pay rent via email money transfer or "etransfer", rather than by cash or certified cheque.

The Parties agreed that the Landlord served the Tenant with a 10 Day Notice by posting it on the rental unit door on October 1, 2019. The ground for the eviction, set out on the 10 Day Notice was that the Tenant had failed to pay the Landlord \$1,200.00 of rent that was due on September 30, 2019. The Tenant provided evidence that she had attempted to pay this rent to the Landlord via an email money transfer on September 30, 2019; however, the Tenant submitted another memo she received from her financial institution, which said that the etransfer to the Landlord "has been cancelled...[because it] could not be processed using the account the sender provided."

The Tenant provided another memo from her financial institution stating that the Tenant

had sent a \$1,200.00 etransfer to the Landlord on October 1, 2019, at 1:04 a.m. The Tenant submitted further evidence from her financial institution saying that the etransfer to the Landlord “has been accepted” on October 6, 2019. The Tenant said that she should not be held responsible for when the Landlord accepts the etransfer.

The Landlord said that etransfers are not instantaneous, but that they must be processed by the Parties’ respective financial institutions first. The Landlord argued that the Tenant’s financial institution took until October 6, 2019 to forward the funds to him, and that his financial institution held the funds for another two days. The Landlord said the Tenant should change her financial institution to avoid this delay in the future. The Tenant argued that the same delay would occur if she paid the Landlord via cheque.

The Tenant submitted a copy of the 10 Day Notice, which was signed, but not dated. The Landlord submitted a copy of the 10 Day Notice, as well, which was identical, except that the Landlord’s copy was dated. I find that the date could only have been added after the Landlord had served the copy on the Tenant.

Counsel argued that this suggests that the Landlord simply signed in the wrong box when making the 10 Day Notice. Counsel said that where the Landlord intended to date and sign, he erroneously entered the date in the service date box. Counsel said that when the Landlord took his own copy, he noted down the service date. Counsel referred to this as “an innocent discrepancy.” When I noted the missing date in the hearing, the Landlord insisted that everything on the 10 Day Notice was filled out properly from the start, and he contested that the Tenant’s copy was different than the copy he had submitted.

In the hearing, the Landlord confirmed that the Tenant had paid her rent; therefore, he said he was not seeking an order of possession, based on the 10 Day Notice. However, the Landlord opposed the Tenant’s request for recovery of the Application filing fee, saying that he should not be “penalized” for the Tenant’s unnecessary Application to cancel the 10 Day Notice.

Counsel said that there are two difficulties with the Tenant’s position that she should be awarded recovery of the \$100.00 Application filing fee. First, he argued that the Tenant did not have to dispute the 10 Day Notice, because she paid her rent within five days of having received the eviction notice. The 10 Day Notice was posted on the rental unit door on October 1, 2019. I find it was deemed received by the Tenant on October 4, 2019, “on the 3rd day after it is attached,” pursuant to section 90 of the Act. Therefore, the Tenant had until October 9, 2019, or “within 5 days after receiving a notice under

this section” to pay her rent or apply for dispute resolution to dispute the validity of the 10 Day Notice. Counsel said that the Landlord received the etransfer on October 6, 2019; therefore, the Tenant did not need to apply for dispute resolution to dispute the 10 Day Notice.

The Tenant said that she was protecting herself by applying for dispute resolution to cancel the 10 Day Notice. She said she called the RTB and was advised to apply for dispute resolution if there is any doubt as to when she paid and when the Landlord would receive the rent for October 2019. The Tenant said she paid the rent on October 1, 2019, but the Landlord did not accept the etransfer until October 6, 2019. She said:

There was a slight delay, as there would be with a cheque. [The Landlord] has stressed how long this has taken, yet he waited until the early hours after five days of serving [the 10 Day Notice] to accept [the rent payment].

Counsel said that the second issue is that the Tenant had no need to file this Application, because a landlord cannot simply throw a tenant out, based on service of an eviction notice. Rather, he said, a landlord must apply for dispute resolution to obtain an order of possession. Counsel said that the Tenant should have waited for the Landlord to serve her with an application for an order of possession, and then provided the evidence of her payment on time. Counsel said that the filing fee would have been paid by the Landlord in this situation; therefore, the Tenant was “jumping the gun” by applying for dispute resolution in her situation.

Counsel also said that filing fees are usually, and in principle, granted to the successful party. He added: “Additionally, to grant [the Tenant] the fees would be to punish [the Landlord] when he has not done anything wrong. A clear error.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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.

[emphasis added]

Based on the evidence before me, overall, I find that the Tenant complied with section 46(4)(a) of the Act; therefore, I find that the 10 Day Notice has no effect and is cancelled.

In addition, I note that the tenancy agreement states that the Tenant must pay the rent on or before the last day of every month, and that the rent shall be applied to the first day of the month. As such, I find that the Landlord was premature in serving the Tenant with the 10 Day Notice on October 1, 2019, as according to the rules in the tenancy agreement, the Landlord may have received the Tenant's e-transfer yet that day. The Landlord provided insufficient evidence that he knew he would not receive the rent payment to apply on October 1, 2019.

Further, I find that the Landlord changed the content of the 10 Day Notice after having served it on the Tenant. In addition, he uploaded his amended version, as evidence of the content of the 10 Day Notice that was served on the Tenant. Based on this, the Landlord's insistent denial of having done this, and the Landlord's treatment of the Tenant during the hearing, as noted above, I find it more likely than not that the Landlord attempted to correct an error he had made on the original eviction document. I do not accept Counsel's suggestion that this is an "innocent discrepancy"; rather, I find that the Landlord misrepresented the content of the document he had served on the Tenant. I find that the 10 Day Notice was not dated, and therefore, was inconsistent with the content requirements of section 52 of the Act.

Given the Landlord's behaviour overall, I find the Tenant was prudent to "cover her bases" by applying for dispute resolution, as well as having paid the rent prior to having received the 10 Day Notice. I find the Tenant is successful in her Application and I award her recovery of the \$100.00 Application filing fee. The Tenant is authorized to deduct \$100.00 from one future rent payment in recovery of this award.

Conclusion

The Tenant is successful in her Application to cancel the 10 Day Notice and to recover the \$100.00 Application filing fee. The Tenant paid her rent and applied for dispute resolution within five days of being served with the 10 Day Notice. Further, the Landlord modified his incomplete copy of the 10 Day Notice that he had served on the Tenant, in order to bring it into compliance with the Act.

The Tenant is awarded recovery of her \$100.00 Application filing fee. The Tenant is authorized to deduct this amount from one future rent payment, in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 09, 2019

Residential Tenancy Branch