



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IK 74ave Projects Inc.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

Tenant: CNR, FFT
Landlord: MNRL, OPR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant made an Application for Dispute Resolution on January 2, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 29, 2019 (the “10 Day Notice”); and
- an order granting the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on January 17, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant’s advocate J.A., and the Landlord’s Agent P.B. attended the hearing at the appointed date and time.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail on January 10, 2020. The Landlord’s Agent confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord's Agent testified that he served the Tenant with the Landlord's Application package by registered mail on January 24, 2020 and the Landlord's documentary evidence by registered mail on February 19, 2020. The Landlord submitted a copy of the registered mail receipts in support, confirming the two mailings took place on the stated dates. The Landlord also provided pictures of the envelopes with the registered mail sticker on them as well as a picture of their contents of each envelope.

The Tenant confirmed receipt of the Landlord's documentary evidence, however the Tenant stated that he did not receive the Landlord's Application packaged. Pursuant to section 88 of the *Act*, I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

In regards to the Landlord's Application package, I find that the Landlord has provided sufficient evidence to demonstrate that the Landlord sent the Application package to the Tenant by registered mail on January 24, 2020. Based on the oral and written submissions of the Landlord and their Agent, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application on January 29, 2020, the fifth day after their registered mailing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated December 29, 2019, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
5. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2018. The Tenant stated that the agreement between the parties was that the Tenant could reside in the rental property in exchange for caretaking work he provided. The Landlord's Agent stated that the Tenant had been staying in the rental property for some time, however, the parties came together and signed a tenancy agreement on October 1, 2019. The Landlord considered this date to be the start of the tenancy.

Regardless, the parties agreed that currently, rent in the amount of \$2,000.00 is due to the Landlord on the first day of each month. The Landlord stated that the Tenant was meant to pay a security deposit in the amount of \$1,000.00, however, the Tenant only provided the Landlord with a \$700.00 security deposit which the Landlord continues to hold. The Tenant denied signing a tenancy agreement. The Landlord did not provide a copy of the tenancy agreement and stated that it had been misplaced.

The Landlord's Agent testified that the Tenant did not pay rent when due for October, November and December 2019. The Landlord's Agent stated that he subsequently served a 10 Day Notice dated December 29, 2019 with an effective date of January 10, 2020 to the Tenant in person on December 29, 2019. The Tenant confirmed receipt. The Landlord's Agent testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$6,000.00 to the Landlord which was due on December 1, 2019.

The Tenant testified he has paid rent in full to the Landlord for October, November and December 2019. The Tenant stated that the Landlord's 10 Day Notice is false and should be dismissed. The Tenant stated that he shares the rental property with roommates who are either on disability or income assistance. As such, the Tenant and his roommates cash their monthly cheques and withdraw cash from the bank, before the Tenant pays the Landlord the full amount of rent in cash each month. The Tenant stated that the Landlord refused to provide the Tenant with a rent receipt confirming the rent payments made.

The Landlord's Agent responded by stating that the Tenant has not paid him rent, therefore, no rent receipts were provided. Furthermore, the Landlord's Agent stated that the Tenant has failed to pay rent for January, February and March 2020. Currently, the Tenant has an outstanding balance of rent owing to the Landlord in the amount of \$12,000.00.

In response, the Tenant stated that the Landlord asked him to vacate the basement of the rental property as it was in breach of city bylaws, therefore, the Tenant requested the rent to be reduced to \$1,400.00 per month as the Tenant would lose access to a portion of the rental property. The Tenant stated that he offered payment to the Landlord, however, the Landlord refused to accept the rent in January 2020. The Tenant acknowledged that he has not paid rent for January, February and March 2020. The Landlord's Agent denied that the parties had an agreement to reduce the rent and that the Tenant did not offer the Landlord any payments of rent.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent stated that he served the Tenant with the 10 Day Notice dated December 29, 2019 with an effective vacancy date of January 10, 2020 in person on December 29, 2019. The Tenant confirmed receipt. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenant had until January 3, 2020 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenant submitted his Application within the appropriate timeline.

In this case, the Landlord's Agent stated that he has only received \$700.00 from the Tenant in October 2019 and that the Tenant has not paid rent to the Landlord ever

since. The Tenant stated that he has paid rent to the Landlord in October, November and December 2019, however, the Landlord did not provide him with any receipts for rent payments.

According to Section 26(2) of the Act, **a landlord must provide a tenant with a receipt for rent paid in cash.**

[Emphasis added]

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. In the case before me, I find the Landlord provided insufficient evidence that the Tenant has failed to pay rent in full, when due to the Landlord for October, November and December 2019 as indicated on the 10 Day Notice.

While the parties disagreed if rent was paid, I find that the parties did agree that the Tenant paid the Landlord \$700.00 in cash, in October 2019 for which the Tenant did not receive a receipt from the Landlord. During the hearing, the Landlord's Agent acknowledged that no receipt was given to the Tenant.

I find the landlord has breached section 26(2) of the Act by not providing the Tenant with a receipt for the cash payment made to the Landlord in October 2019. Furthermore, I find the Landlord's breach lends some doubt as to if receipts were withheld from the Tenant for rent payments the Tenant stated he made, preventing the tenant from being able to prove if rent has been paid.

As a result of the above, I cancel the 10 Day Notice as I find the Landlord's breach of the Act prevented the tenant from being able to provide proof of cash payments by failing to issue receipts, which are required under section 26(2) of the Act.

The Landlord's Application is dismissed in its entirety without leave to reapply.

Based on the above, I order the tenancy to continue until ended in accordance with the Act. In addition, I caution the Landlord to issue receipts for all future rent payments made in cash by a Tenant.

As the Tenant's Application had merit, I grant the Tenant the recovery of the \$100.00 filing fee. I authorize the tenant a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The 10 Day Notice dated December 29, 2019 issued by the Landlord has been cancelled and is of no force or effect. The Tenant has been granted a one-time rent reduction in the amount of \$100.00 for the recovery of their filing fee.

The tenancy shall continue 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: March 06, 2020

Residential Tenancy Branch