



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

On March 6, 2020, 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 cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

The Tenant attended the hearing and E.L. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served an agent for the Landlord with the Notice of Hearing and evidence package by hand on March 16, 2020 and E.L. confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

E.L. confirmed that the Landlord did not submit any evidence for consideration on this file.

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?

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 or around July 1, 2010. Rent is currently established at \$619.85 per month and is due on the first day of each month. A security deposit of \$297.50 was also paid.

E.L. advised that the Notice was served to the Tenant by mail on March 5, 2020 and all parties agreed that the Tenant paid the outstanding \$61.93 on the Notice within 5 days of being deemed to have received the Notice. As a result, this cancelled the Notice pursuant to Section 46(4)(a) of the *Act*.

However, the Tenant argued that he did not owe this amount at all. Before taking submissions about why he believed he did not owe this amount, he was asked about his request to also dispute a One Month Notice to End Tenancy for Cause. He stated that his cause was because he believed he did not owe the rent. He was explained that I needed to confirm that his request to dispute this type of notice was an active issue, so he was asked if he was ever served a One Month Notice to End Tenancy for Cause. The Tenant became combative and kept reiterating that his cause was due to his belief that he did not owe the \$61.93 and he kept making statements that the Landlord actually owed him \$100.00. He stated that it was his belief that the conduct of the hearing was not fair to him as he was not being heard. He was again explained that I needed to address the pertinent issues brought forth in his Application and that he would have an opportunity to make submissions pertaining to his alleged over payment of rent, but I needed to determine if the dispute of the One Month Notice to End Tenancy for Cause would also potentially need to be addressed. It was eventually determined that the Tenant was never served this type of notice and as such, the dispute of the One Month Notice to End Tenancy for Cause was amended to be removed from his Application. Even though the Tenant was still argumentative, he took

a sullen, defensive attitude and stated that he would no longer make any comments for the remainder of the hearing.

In order to address the Tenant's allegation that he had overpaid his rent, E.L. was asked to explain the nature of the arrears on the Notice. She submitted that the Tenant was in arrears rent on January 1, 2020 in the amount of \$2,746.78. However, the Tenant received rent payments from the church on January 2, 2020 in the amount of \$1,434.85 and on January 14, 2020 \$1,219.85. Therefore, a balance of \$92.08 was still remaining in arrears. On February 4, 2020, the Tenant received a rent payment from social assistance in the amount of \$650.00 towards February 2020 rent. As the Tenant's rent was \$619.85 per month, this overpayment from social assistance was offset from the arrears of \$92.08 in arrears, leaving the Tenant still owing \$61.93 as an outstanding balance. She then stated that social assistance corrected these rent payment cheques to reflect the correct amount of rent and the Tenant's rent has been paid from March 2020 onwards in the amount of \$619.85 per month. Therefore, despite the rent payments on behalf of the church and from social assistance, the Tenant was still in arrears \$61.93. Hence, the Notice was served for this amount.

During this testimony, despite the Tenant's previous remarks that he would not be making any more comments during the hearing, he would continually interject while E.L. was testifying. He was warned to refrain from doing this and was reminded that he would have an opportunity to provide his testimony. Each time, he apologized, only to continue to behave in the same manner.

The Tenant was then provided with an opportunity to explain why he did not owe the \$61.93. He acknowledged that he was in arrears \$2,746.78 on January 1, 2020, that the church had paid rent for him on January 2, 2020 and January 14, 2020 in the amounts of \$1,434.85 and \$1,219.85, and that social assistance had paid his February 2020 rent in the amount of \$650.00. In an attempt to explain why he did not owe the arrears that the Landlord sought, he made reference to a ledger that he provided as documentary evidence. This ledger was not clear, with many numbers, dates, and calculations that were barely legible, or had corrections that were added and had items scratched off. The Tenant was given ample opportunity to guide me through his ledger to explain how he determined that he did not owe this money. However, he was unable to describe how he made these calculations, and he continually made reference to the Landlord actually owing him \$100.00 instead. He could not clarify where this amount came from, as opposed to, or in addition to the \$61.93.

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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

As the Tenant had paid the amount on the Notice within five days of receiving it, I am satisfied that the Notice of March 5, 2020 is cancelled and of no force or effect.

With respect to the Tenant's allegation that this amount was not owed, 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. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the amount of arrears as of January 1, 2020 was correct, that the church made two payments in January 2020 for the Tenant to reduce the amount of arrears, that social assistance made an overpayment for the Tenant in February 2020 to partially offset the remaining arrears, and that social assistance had corrected the rent payment amounts for the Tenant's rent going forward to the appropriate amount. As the Tenant could not provide any clear testimony or evidence to support his allegation that the Landlord owed him money, I prefer the undisputed evidence presented before me that demonstrated that despite the church and social assistance paying a significant amount of the Tenant's outstanding rent, he was still in arrears \$61.93, which he eventually paid. Ultimately, I am satisfied that the Landlord does not owe the Tenant any money as alleged by the Tenant, and I find that the Tenant's rent appears to be currently up to date as rent has been paid by social assistance for the Tenant in the amount of \$619.85 per month.

The Tenant continued to make comments about how he took issue with the Landlord harassing him by continually serving him notices, and he was reminded that any issues that he had with the Landlord that did not relate to the dispute of the Notice, would have to be addressed in a separate Application. The Tenant then advised that he would be

exiting from the teleconference call and he then removed himself on his own accord prior to the end of the Dispute Resolution proceeding.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent of March 5, 2020 to be cancelled and of no force or 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: May 10, 2020

Residential Tenancy Branch