



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On July 7, 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 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 with the Notice of Hearing package by hand on July 8, 2020, and the Landlord confirmed receiving this package. 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 package.

The Landlord advised that she served the Tenant with her evidence by hand on July 31, 2020, and the Tenant confirmed receiving this package. Based on this undisputed evidence, and as this evidence was served in accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was served the Landlord’s evidence.

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?
- Is the Tenant entitled to recover the filing fee?

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 October 1, 2017, that rent is currently established at \$2,000.00 per month, and that it is due on the first day of each month. A security deposit of \$1,000.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that she served the Notice by hand on July 4, 2020 and the Tenant confirmed he received it. The Notice indicated that \$5,000.00 was due on July 9, 2020 and that the effective end date of the tenancy was July 14, 2020.

The Landlord advised that the rent arrears on the Notice stems from rent owing after the provincial State of Emergency was declared, and that no rent was in arrears prior to that date.

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 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.

However, a State of Emergency throughout the province was declared on March 18, 2020 due to the COVID-19 pandemic which prohibited this type of Notice being served for rent owing during this State of Emergency period. The undisputed evidence is that the rent in arrears stems from rent owing during the State of Emergency, that the Notice was served during this State of Emergency, and that the State of Emergency has been extended. As such, I am not satisfied of the validity of the Notice. I find that the Notice of July 4, 2020 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of July 4, 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: August 10, 2020

Residential Tenancy Branch