



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY OF TEH WHOLE PERSON NON
DENOMINATINAL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

On September 11, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued September 6, 2020, for an order for the Landlord to comply with the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Issues to be Decided

- Should the Notice issued on September 6, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be Ordered to comply with the *Act*?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this tenancy began in May 2018, that rent in the amount of \$1,800.00 is to be paid each month, and the Landlord is holding a \$85.00 deposit for this tenancy. The parties also agreed that no written tenancy agreement had been created for this tenancy.

The Landlord testified that they served the 10-Day Notice to the Tenant on September 6, 2020, by posting it to the front door of the rental unit. The 10-Day Notice recorded an effective date of September 19, 2020, and an outstanding rent amount of \$1,800.00. The Landlord submitted a copy of the Notice into documentary evidence. The Landlord is requesting that the Notice be enforced and that an order of possession is issued, as the Tenants have not paid the rent since receiving the Notice.

The Tenant testified that the monthly rent is not due until the tenth of each month and that the Notice to end tenancy had been issued before the rent was due.

The Landlord testified that it is their policy that all rent is due for all of their tenancy on the first of each month.

The Tenant was unable to offer testimony as to the detail of their claim for an order for the Landlord to comply with the *Act*.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord served the Notice to End Tenancy on September 6, 2020, by posting it to the front door of the rental unit, which is an approved method of service provided for under section 88 of the *Act*. Section 90 of the *Act* states that unless it is shown otherwise, a document served in this manner is deemed to have been received three days after the day in which the notice was posted.

When documents are considered to have been received

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Without evidence to the contrary, I find that the Tenant was deemed to have received the Notice on September 9, 2020.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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.

Accordingly, I find that the Tenants had until September 14, 2020, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed to dispute the Notice on September 11, 2020, within the statutory timeline.

In this case, the Tenant had argued that the Landlord breached section 46 of the *Act* when they served the Notice to end tenancy four days before the day the rent was due. Section 46(1) of the *Act* states the following:

Landlord's notice: non-payment of rent

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I find that the parties, in this case, offered conflicting verbal testimony regarding the day in which the rent is due for this tenancy; the Tenant claiming that the rent is due on the tenth of each month and the Landlord claiming that the rent is due on the first of each month. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As stated above, it is the Landlord who holds the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice they issued. Therefore, I find that it is the Landlord who must provide sufficient evidence over and above their testimony to establish the validity of this Notice and the date that the rent is due for this tenancy.

I have reviewed the testimony and documentary evidence provided by both parties, and I find that there is no evidence before me to show that the September rent was past due at the time this Notice was issued. Therefore, I grant the Tenant's application to cancel the Notice dated September 6, 2020, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

As the Tenant was unable to provide testimony regarding their claim for an order for the Landlord to comply with the *Act*, I dismiss this portion of the Tenant's claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant had been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application. The Tenant is granted permission to take a one-time deduction of \$100.00, from their next month's rent, in full recovery of this award.

Conclusion

I grant the Tenant's application, and I find the 10-Day Notice dated September 6, 2020, of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I dismiss the Tenant's for an order for the Landlord to comply with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: November 4, 2020

Residential Tenancy Branch