



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

On November 3, 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 “10-Day Notice”) issued on October 31, 2020, and for more time to dispute the Notice. The matter was set for a conference call.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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

- Is the Tenant entitled to more time to apply to dispute the Notice?
- Should the Notice issued on October 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 11:11 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that they served the 10-Day Notice to the Tenant on October 31, 2020, by posting it to the front door of the rental unit, listing the rent for October 2020 as unpaid. The Landlord testified that they received a full rent payment on November 3, 2020. The Landlord agreed that November 3, 2020, covered the outstanding rent due on the October 31, 2020 Notice.

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 Tenant has been abandoned their application for Dispute Resolution.

I accept the Landlord testimony that they served the Notice on October 31, 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 November 3, 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 November 8, 2020, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice.

I accept the testimony of the Landlord that they received the full rent payment on November 3, 2020. I find that the Tenant did pay the outstanding amount due within five days of receiving the Notice, as allowed by the *Act*.

As the outstanding rent had been paid within five days, I find the Landlord is not entitled to an order of possession.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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: January 22, 2021

Residential Tenancy Branch