



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 3, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated December 2, 2020.
- an order that the Landlord comply with the *Act*; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent R.P. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). 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 *Residential Tenancy Act* (*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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an Order that the Landlord comply with the *Act*, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. 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*?

Background and Evidence

The parties testified that the tenancy began on January 1, 2010. Currently, rent in the amount of \$1,893.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 which the Landlord continues to hold.

The Landlord's Agent stated that the Tenant has a pattern of paying rent late. The Landlord's Agent stated that the Tenant failed to pay rent on December 1, 2020. As such, the Landlord served the Tenant with the 10 Day Notice dated December 2, 2020 with no vacancy date listed. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,893.00 which was due on December 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice. The Tenant confirmed having received the 10 Day Notice on December 3, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord's Agent stated that the Landlord received the rent payment from the Tenant on December 7, 2020 by Registered Mail. As such, the Landlord is no longer seeking to end the tenancy based on the 10 Day Notice. The Landlord's Agent objected to the Landlord paying the \$100.00 filing fee given the rent was paid late.

The Tenant stated that he has been paying rent by certified bank draft for the past three years. The Tenant stated that due to some issues relating to the tenancy, the Tenant has been sending the Landlord the bank draft containing the rent by registered mail

each month, and has served the Landlord the rent in this fashion for the past year. The Landlord's Agent could not confirm this information on behalf of the Landlord.

The Tenant stated that he sent the rent to the Landlord via registered mail on November 26, 2020 and stated that it would be deemed served to the Landlord on December 1, 2020 when rent is due. The Tenant stated that the Landlord purposely delayed collecting the rent and served a 10 Day Notice to the Tenant in an attempt avoid his responsibilities to repair the rental unit and is seeking to end the tenancy as a result. The Tenant referred to his documentary evidence in support. The Tenant is seeking the return of the filing fee.

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 Tenants 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.

In relation to the 10 Day Notice dated December 2, 2020, The Landlord's Agent stated that the Landlord served the 10 Day Notice to the Tenant on December 2, 2020. The Tenant confirmed receipt on December 3, 2020. Therefore, pursuant to section 88 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

During the hearing, the Landlord's Agent confirmed that the Tenant paid the rent within the 5 days permitted in accordance with the 10 Day Notice. As such, the Landlord is no longer seeking to end the tenancy as a result. I therefore cancel the 10 Day Notice dated December 2, 2020 and order that the tenancy continue until it is ended in accordance with the *Act*.

The parties were in a disagreement as to who should pay the \$100.00 filing fee. In this case, I find that the Tenant provided sufficient evidence to demonstrate that he sent his rent in form of a certified bank draft to the Landlord via registered mail on November 26, 2020. The Tenant provided the tracking information which shows that the "Notice card left indicating where and when to pick up item" was delivered to the Landlord on November 27, 2020 by Canada Post.

As such, I find that the Landlord would have been aware that there was mail for them at the Canada Post office. I accept that the Tenant has paid the rent in the fashion for approximately one year. As such, I find that it is reasonable for the Landlord to have expected the rent for December 2020 to arrive in the mail and that it was made available to the Landlord as of November 27, 2020, therefore, making the 10 Day Notice unnecessary.

As such, I find that the Tenant is entitled to the recovery of the \$100.00 filing fee. I order that the Tenant deduct \$100.00 from one (1) future rent payment.

Conclusion

The 10 Day Notice dated December 2, 2020 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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: February 26, 2021

Residential Tenancy Branch