



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: **OPR-DR-PP, OPRM-DR, FFL**
 TT: **CNR-MT, FFT**

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenant applied for:

- More time to cancel the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application for dispute resolution and evidence by registered mail sent on or about December 22, 2020. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find the landlord deemed served with the tenant’s materials on December 27, 2020, five days after mailing in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to more time to file their application?

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. The monthly rent for this tenancy is \$1,400.00 payable on the first day of each month. By a decision dated November 17, 2020 under the file numbers on the first page of this decision the tenant was authorized to make a one-time deduction of \$200.00 from their rent. The tenant deducted \$200.00 as authorized and paid rent for the month of December 2020 in the amount of \$1,200.00.

The tenant testified that they were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2020 on or about December 17, 2020 and filed their present application to dispute the notice on that date. The notice indicates the \$200.00 withheld to be an arrear payable on December 1, 2020.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the landlord's application in its entirety without leave to reapply.

I accept the tenant's submission that they were served with the 10 Day Notice on December 17, 2020 and filed their application on that date. While the tenant has requested more time to file their application, I find it unnecessary as they filed their application within the 5 days of service required under section 46(4) of the *Act*.

I accept the evidence that the tenant was authorized to make a deduction of \$200.00 from their rent payment for the month of December 2020. I accept that they paid the full

rent payable on December 1, 2020 and that there was no basis for the 10 Day Notice. As such I allow the tenant's application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the Act.

As the tenant was successful in their application they are authorized to recover the filing fee from the landlord. The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment in satisfaction of this monetary award.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The 10 Day Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next 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: March 15, 2021

Residential Tenancy Branch