



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNR

Introduction

The tenant applies for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to [section 46](#) of the *Residential Tenancy Act* ("Act").

The parties attended the hearing, held by teleconference, on April 10, 2021. It should be noted that the landlord dialed into the hearing at 1:30 PM, and the tenant dialed into the hearing at 1:48 PM. By the time the tenant had joined the hearing, the landlord had completed his testimony. He was not asked to repeat his testimony, but I nevertheless provided a brief summary to the tenant.

There was little documentary evidence in this dispute, and the bulk of the evidence was the landlord's evidence, copies of which he acknowledged had not been served on the tenant. As the [Rules of Procedure](#), under the Act, require that parties serve the opposing side with copies of evidence that they wish to rely on, and as this was not done in this dispute, I will not accept or consider the landlord's documentary evidence.

Issue

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on October 1, 2016. (The landlord thought that it began December 1, 2016, but the tenant believes it was October 1). Monthly rent, due on the first day of the month, is \$1,800.00. The tenant paid a security deposit of \$900.00. There is no dispute between the parties as to the terms of the tenancy agreement and the rent.

On January 7, 2021, the landlord served the 10 Day Notice on the tenant, in person. A copy of the 10 Day Notice was submitted into evidence, and on page two of the 10 Day Notice it states that on January 1, 2021 the tenant failed to pay rent in the amount of \$35,000.00. This is not a typo.

Other than for the months of December 2016, March 2017, and the four months since the landlord issued the 10 Day Notice, the landlord testified that the tenant has paid less than the required rent of \$1,800. Approximately three-quarters of the rent has been continuously being paid by a ministry. However, given that the tenant has paid the full rent since the 10 Day Notice was issued, the landlord argued that the tenant is fully “capable of paying” the total amount of rent.

The landlord’s testimony, which is reflected in his written submission, was that:

8. The landlord made many repeated attempts to be paid full monthly rent by attempting to contact the tenant via email, phone, text, and in person at the rental property. The tenant was often difficult to find via these methods, including in person.
9. Over the years, the tenant offered various reasons why she was unable to pay the rent in full and offered that she would pay all owed rent over time. This never came to pass as there is now more than \$30,000 in unpaid rent.
10. The landlord, on several occasions, asked the tenant to move out. The tenant, on several occasions, agreed to search for another residence and asked for time to do so, which the landlord allowed, while reiterating that unpaid rent was still owed.
11. In December 2020, the landlord once again asked the tenant to move out, stating that the next course of action would be a formal Notice of Unpaid Rent to force the tenant to move out.

The landlord testified that he had issued three previous 10 Day Notices, one in 2017 and two more at some future date. He did not have copies of those notices, and he did not have any record of the specific dates. The landlord testified that he never pursued enforcement of those notices and that they “don’t count as official notices.”

The landlord reiterated, more than once, that he has not forgiven or otherwise forfeited the rent arrears. An accumulated amount just shy of \$35,000 is still owed. In December 2020, he had a conversation with the tenant and said that unless she paid up and started paying on time, that he would issue a notice to end the tenancy.

The tenant also testified about this conversation and asked if he could “hold off” for a bit until she could resume paying the full \$1,800 in January 2021. While she was not able to full \$1,800 on January 1, 2021, she did pay some. At some point, however, the full \$1,800 was paid for January. Since then, the tenant has paid the full rent of \$1,800 for the months of February, March, and April of 2021.

The tenant did not dispute that she had not paid the full rent. But, rather, argued that given the landlord’s ongoing acceptance of a lesser amount, that the issuing of the 10 Day Notice is not particular fair. Further, she testified that she always paid what she could, when she could afford it, but that it was never her intention not to pay the full amount of rent (at least at some point). In rebuttal, the landlord reiterated that he has always maintained that rent was to be paid in full and that “partial rent is not O.K.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay 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 the Act to deduct all or a portion of the rent.

The landlord issued the 10 Day Notice under section 46 of the Act for the tenant’s failure to pay rent in full and on time.

However, having carefully considered the testimony of the landlord and the tenant, I find that the landlord may not, on the basis of a legal principle known as *estoppel*, end the tenancy based on the 10 Day Notice which was issued on January 7, 2021.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party’s previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

The landlord testified that he made many repeated attempts to be paid full rent by contacting the tenant by email, phone, text, and in person, but there is no documentary evidence to support this assertion. Nor is there a single copy of any previous 10 Day Notice being issued by the landlord for unpaid – that is, less-than-fully-paid – rent.

In short, there is no documentary evidence before me to be persuaded that the landlord actually took any effort to collect the full amount of the rent. What is more, I do not find that the landlord's emailing, texting, phoning, and visiting the tenant to ask her to pay the full rent is equivalent to enforcing his rights as a landlord to be paid the full rent. The issuing of a previous notice to end tenancy would ordinarily constitute written notice that the landlord intends to begin strictly enforcing his rights, but the landlord could not provide any evidence of having issued these notices. Indeed, he commented that they "don't count as official notices."

In accepting the amounts being sent to the landlord by the ministry as rent for a period of almost 4 years, the landlord essentially gave implied consent for the tenant to continue occupying the rental unit for the amount of rent paid by the ministry, instead of having to pay the full, required rent.

I find that the landlord established a pattern of failing to enforce his right to collect the full amount of the rent on the first day of the month. This pattern continued over a period of 4 years. The tenant, not surprisingly, must have thought that it was acceptable for this arrangement to continue. Even if the landlord had texted or emailed her from time to time about paying the full rent, his lack of following through with enforcing that would, in my mind, simply reinforce the tenant's expectations. While the tenant acknowledges that rent is \$1,800, the landlord's lack of taking any reasonable steps to enforce full payment leads me to conclude that the landlord had, by the time January 7, 2021 arrived, waived his right to end the tenancy based on the 10 Day Notice.

For the reasons given above, I find that the landlord is estopped from ending the tenancy based on the 10 Day Notice. I order that the 10 Day Notice is cancelled and that the tenancy will continue until it is ended in accordance with the Act.

While I grant the tenant's application to cancel the 10 Day Notice, the tenant is now aware – and is basically "put on notice" – that she must pay the full rent of \$1,800 on the first day of the month for the duration, and remainder, of the tenancy. The 10 Day Notice which was served on January 7, 2021, shall constitute the landlord's written notice that he intends to now enforce his rights to end the tenancy should the tenant not pay the full \$1,800 which is due on the first day of the month.

If the tenant fails to pay rent in full, when it is due, then the landlord will be at liberty to issue a subsequent 10 Day Notice to End Tenancy for Unpaid Rent, which may be enforced in accordance with sections 46 and 55 of the Act.

Conclusion

I hereby grant the tenant's application and order that the 10 Day Notice, dated January 7, 2021, is cancelled. The 10 Day Notice is of no legal force or effect. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 10, 2021

Residential Tenancy Branch