



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The Landlord and the Tenant appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and Notice of Hearing from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or to the Tenant for this proceeding.

Preliminary and Procedural Matters

The Landlord provided his email address in the hearing and the Tenant asked that the Decision be mailed to him at the rental unit address. The Parties also confirmed their understanding that the Decision sent to the Parties in this manner, and that any Orders would be sent to the appropriate Party, as such.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on July or August 1, 2018, with a current monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit. The Landlord confirmed that he still holds the Tenant's security deposit.

The Parties agreed that the Landlord has not provided the Tenant with a written tenancy agreement, which is a breach of section 13(3) of the Act. Section 13(3) requires a landlord to provide the tenant with a copy of the tenancy agreement within 21 days after a landlord and tenant enter into a tenancy agreement. **I urge the Landlord** to provide the Tenant with a copy of the tenancy agreement as soon as possible, and to retain a copy for himself, even if the Tenant has not signed it.

The Landlord said he issued the 10 Day Notice, because the Tenant owed him \$1,000.00 in unpaid rent for February 2021. The Landlord said the Tenant is often late paying his rent, and that he did not pay it on February 1, 2021. The Landlord said that as a result, he served the Tenant with the 10 Day Notice in person, and the Tenant said this was on or about February 6, 2021. The Tenant said that two or three days later, he went to the RTB office to apply for an Order cancelling the 10 Day Notice. He said that the person he talked to at the RTB told him to pay his rent, which the Tenant said he did immediately upon getting home on February 9, 2021, the day he applied for dispute resolution at the RTB.

The Tenant said that the Landlord stopped providing the cable that had always been provided to that point. He also said he is having issues with noisy neighbours, and that he has had trouble with parking at the residential property. I advised the Tenant that he may apply to the RTB for assistance on such matters; however, he is not allowed to withhold rent from the Landlord without an order from the RTB allowing him to do that.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Rule 6.6 states that the onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

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.

....

[emphasis added]

I considered all oral testimony before me, and pursuant to this testimony and sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice when it was attached to the door by the Landlord. However, without a copy of the 10 Day Notice before me, I am unable to review the compliance of the 10 Day Notice with section 52 of the Act. Further, the Parties were unable to provide the details of the notice in the hearing. The missing details included the date on which it was signed, whether it has the rental unit address, the date it was posted on the door, and the effective vacancy date. As a result, I find that I cannot determine if the 10 Day Notice was compliant with section 52 as to form and content, and therefore, **I cancel this 10 Day Notice** and find it void and unenforceable.

Conclusion

The Tenant is successful in his Application to cancel the 10 Day Notice, as no one provided a copy of the notice to the RTB or testified as to its contents in the hearing; and therefore, I cannot determine if it is valid and consistent with section 52 of the Act, as to form and content. The 10 Day Notice is cancelled and is unenforceable.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 14, 2021

Residential Tenancy Branch