



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on April 9, 2021 for a cancellation of the One-Month Notice to End Tenancy for Cause (“Notice #1”) issued by the landlord on April 8, 2021. This Application also adds the subsequent One-Month Notice (“Notice #2”) signed by the landlord on April 15, 2021. They also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 20, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Respondent landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The tenant’s evidence shows they served this notice to the landlord via registered mail on April 23, 2020 after their Application was finalized. They presented an image of the registered mailing decal they used for this purpose. The tenant stated that the package they sent included all the evidence they intended to rely on for this hearing.

Based on the submissions of the tenant, I accept they served the landlord notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord’s absence.

Preliminary Matter

This Application was joined to two others filed by the tenant around the same time. I addressed this matter in the hearing with all parties present. Those Applications name the tenant's former landlord. I find that previous landlord is not a party to this present Application that concerns matters going forward where the property changed ownership in April 2021.

Those two other files are separated as they did not name the same landlord. I make no findings concerning those Applications in this present decision. The parties so named in those files shall receive separate correspondence in response to the matters that were addressed at the same hearing on July 20, 2021.

Issues to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Notice #1 and/or the Notice #2?

Should the tenant be unsuccessful, is the landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither the tenant nor the landlord provided a copy of the tenancy agreement for this hearing. The tenant spoke to the basic information of the agreement to state that the current amount of rent is \$1,893 payable on the first of the month. The tenancy started on July 1, 2010.

Throughout the tenancy, the tenant paid a bank draft each month, mailing this by registered mail – this was the established practice with the prior landlord. They did so for the month of April 2021; they provided evidence of the bank transaction and the postal record to show this. It was not until April 3rd that they found out there was a new owner of their rental unit. This left them confused and having to cancel the already-posted bank draft. Another resident who is a neighbour of the tenant attended the hearing and provided their recollection that they were not aware that the landlord had changed. This was to verify the tenant's own account that the information was not in place before they paid their rent in this way.

In the hearing, the tenant provided detail on the circumstances of the landlord handing them Notice #1 on April 8. This was a “confusing time” when neither the landlord nor the tenant knew what was happening. Notice #1 shows conflicting dates besides the landlord’s own signature and gives the end-of-tenancy date as April 18, 2021. The second page of the document indicates that the tenant failed to pay the correct rent amount of \$1,893 on April 1, 2021.

Without the original copy of the bank draft that they had previous sent to the landlord, the tenant was unable to cancel it. They received that original bank draft back on April 17th.

After this, the landlord issued Notice #2. This indicates the landlord signed that document on April 15, 2021. The tenant gave their account that they received this document on April 19th, 2021 when it was attached to their door. The document indicates the same amount of rent owing on April 1, 2021. The document did not provide an end-of-tenancy date in the space provided for that information.

After this, the tenant made the payment to the landlord by bank draft on April 21, 2021. The tenant provided a received signed by the landlord that they received the rent on April 22, 2021.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

The *Act* s. 46(4) states that within 5 days of receive a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application. Here, I find the landlord served Notice #1 to the tenant on April 8, 2021, with nothing to counter the information provided by the tenant in the hearing. The tenant applied to cancel Notice #1 on April 9, 2021, within the legislated timelines.

After this, the landlord issued Notice #2 to the tenant on April 19. I find the tenant’s evidence credible on this date of service, with nothing in place from the landlord to counter that. I also find it clear from the tenant’s evidence that they paid rent on April 21, 2021, as indicated in the landlord’s receipt in the evidence.

I find Notice #1 was issued on the landlord's assumption, based on insufficient information at that time. I find the record clear that the tenant had paid the rent in the established manner. Moreover, because the landlord issued Notice #2, I find the act in itself shows the landlord withdrew Notice #1. I so order Notice #1 cancelled.

After this, the landlord accepted rent from the tenant, as shown by the receipt they issued on April 22, 2021. I find this is within the established 5-day timeline set out in s. 46(4). For this reason, I order Notice #2 is cancelled.

Alternatively, the document bears no effective date in the required space. This does not meet the requirements for a valid, effective notice as per s. 52(d) of the *Act*.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons outlined above, I order each of Notice #1 issued on April 8, 2021, and Notice #2 served on April 19, 2021 are cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 21, 2021

Residential Tenancy Branch