



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

On May 3, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, they were reminded to refrain from doing so, and all parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by placing it in the Landlord’s mailbox on May 16, 2021, but she did not have any proof of service to corroborate this service. The Landlord advised that she did not receive this package and only found out about the hearing after contacting the Residential Tenancy Branch. However, she indicated that despite this, she was willing to proceed with the hearing as she understood the Tenant’s claim. Based on this undisputed testimony, despite the Tenant not serving the Notice of Hearing package in a manner pursuant to the *Act*, I am satisfied that the hearing could proceed.

The Tenant advised that she texted her evidence to the Landlord on May 15, 2021 and the Landlord confirmed that she received these texts. In addition, the Landlord stated that she was prepared to proceed with this evidence. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 *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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2020, that rent was established at \$2,900.00 per month, and that it was due on the first day of each month. A security deposit of \$1,450.00 was also paid. A copy of the signed tenancy agreement was not submitted for consideration on this file.

The Landlord advised that the Notice was served to the Tenant by hand on May 3, 2021 and the Tenant confirmed that she received this. Neither party submitted a copy of the Notice for consideration, so the details on the Notice were reviewed with each party during the hearing. Both parties confirmed the accuracy of those details. The Tenant was requested to upload a copy of this Notice during the hearing, which she confirmed she did; however, this was not done.

The Landlord advised that she served the Notice because \$7,120.00 was in arrears and was due on May 1, 2021. She handwrote on this Notice the amounts of rent owing as follows:

- October 2020 \$2,900.00
- April 2021 \$1,320.00
- May 2021 \$2,900.00
- **Total Arrears \$7,120.00**

The effective end date of the tenancy was noted on the Notice as May 12, 2021.

The Landlord advised that the Tenant never paid rent on time. She stated that the Tenant would sometimes pay by electronic transfer but would also sometimes ask the Landlord to come and pick up cash that was left under the Tenant's doormat. She submitted that the Tenant did not pay October 2020 rent and made excuses about having issues with the bank. However, this month's rent was never paid.

She stated that for April 2021 rent, the Tenant paid \$300.00 on April 28, 2021 and \$780.00 on April 30, 2021 by electronic transfer, and then asked the Landlord to pick up \$500.00 in cash on May 1, 2021. Thus, \$1,320.00 was still outstanding for April 2021 rent.

She stated that the Tenant simply did not pay any rent for May 2021 and has not paid any rent since. She advised that the Tenant did not have any authorization to withhold the rent.

The Tenant advised that she paid October 2020 rent by electronic transfer on October 1, 2020 and the Landlord informed her on October 5, 2020 that the rent was not received. The Tenant stated that she contacted the bank and was advised that the rent was accepted by "someone". She stated that she informed the Landlord of this and the

Landlord denied receiving any rent. However, she stated that the Landlord never brought this rental arrears up again until the Notice was served.

The Tenant advised that she sent the Landlord an electronic transfer of \$700.00 on April 1, 2021, an electronic transfer of \$300.00 on April 4, 2021, and that she left \$1,900.00 in cash under her doormat for the Landlord to pick up on April 7, 2021. She stated that the Landlord texted her confirming receipt of this money, but this text was not submitted as documentary evidence.

Both parties agreed that receipts for cash payments of rent were never provided by the Landlord pursuant to Section 26 of the *Act*.

Regarding May 2021 rent, the Tenant advised that she attempted 15 electronic transfers of rent to the Landlord, but the Landlord insisted that this was never received. She provided a screenshot as documentary evidence to demonstrate that at least one attempt was made to pay the Landlord by electronic transfer on May 3, 2021. The Landlord confirmed that the email address for this electronic transfer was correct. The Tenant acknowledged that May 2021 rent was never paid as the Landlord did not accept the electronic transfer, that she never made any other attempts to pay this rent in any other method, and that rent since this date has not been paid as the Landlord would not accept her electronic transfers.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. The undisputed evidence before me is that the Tenant received the Notice on May 3, 2021. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, where a notice to end tenancy is involved, the onus is on the Landlord to justify service of the notice.

As the Tenant received the Notice on May 3, 2021, the Tenant must have paid the rent in full on May 8, 2021 or disputed the Notice on Monday May 10, 2021 at the latest. However, I do not find that the Landlord has provided sufficient, compelling evidence to establish that October 2020 or April 2021 rent has been unpaid. Furthermore, while the undisputed evidence is that May 2021 rent has not been paid, the Tenant has advised that this is not her fault as it is the Landlord who has elected not to accept the Tenant's electronic transfer. To support this, the Tenant submitted a screenshot of an electronic transfer to the Landlord on May 3, 2021, and the Landlord confirmed during the hearing that this was her correct email address for the transfer. Neither party could explain why the electronic transfer could not be received.

Given that the onus is on the Landlord to prove that rent has not been paid, I am not satisfied by what has been presented that the Landlord has adequately established that October 2020 or April 2021 rent has been unpaid. Moreover, while the consistent and undisputed evidence is that May to September 2021 rent has not been paid by the Tenant, it is unclear if the Tenant has not been paying the rent that is owed or if the Landlord is simply refusing the Tenant's electronic transfers.

As such, I am not satisfied that the Landlord has sufficiently corroborated that the Notice is valid. Consequently, I find that the Notice of May 3, 2021 is cancelled and of no force and effect.

As a note of caution, as the undisputed evidence is that, at the very least, rent from May 2021 to September 2021 rent has been unpaid to date, the Tenant should be making all efforts to ensure that this is paid to the Landlord or risk incurring another 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of May 3, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: September 14, 2021

Residential Tenancy Branch