



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNR**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act") for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2021 ("10 Day Notice") pursuant to section 46; and
- An order for the Landlord to comply with the Act, the *Residential Tenancy Regulation* (the "Regulation") and/or tenancy agreement pursuant to section 62.

An agent ("Agent") appeared on behalf of the Landlord and the Tenant appeared at the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited by Rule 6.11 of the *Residential Tenancy Rules of Procedure*.

The Tenant testified he sought and obtained an Order for Substituted Service from the Residential Tenancy Branch authorizing him to serve the Notice of Dispute Proceeding Hearing and Tenant's evidence ("NOH Package") on the Landlord by facsimile. The Tenant stated that, pursuant to the Order for Substituted Service, he transmitted the Hearing Package to the Landlord on September 14, 2021. Although the Agent testified that some pages were missing from the facsimile transmission, they were prepared to proceed with the hearing. I find that the Landlord was sufficiently served with the NOH Package on September 17, 2021 pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Landlord’s Evidence:

The Agent admitted that the Landlord served its evidence on the Tenant less than 7 days before the date of the hearing. Residential Tenancy Branch Rule of Procedure 3.15 requires that the respondent serve their evidence on the applicant not less than 7 days before the hearing. I find that the Landlord’s evidence was late and was not admissible for the hearing.

Issue(s) to be Decided

Is the Tenant entitled to:

- Cancellation of the 10 Day Notice?
- An order that the Landlord to comply with the Act, the Regulation and/or tenancy agreement?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant’s application and my findings are set out below.

The Agent testified the tenancy commenced on February 1, 2021 with a fixed term of 1 year with monthly rent of \$1,275 payable on the first of each month. The Tenant paid a security deposit of \$637.50 which the Agent confirmed was being held by the Landlord. The Tenant confirmed the details of the tenancy agreement provided by the Agent.

The Agent testified that an employee of the Landlord served the Tenant with the 10 Day Notice on May 3, 2021 by placing it in front of the Tenant’s door. The Tenant acknowledged receipt of the 10 Day Notice. I find the Tenant was served with the 10 Day Notice in accordance with section 88 of the Act. I find the Tenant made his application for dispute resolution within 5 days of the date of service of the 10 Day Notice.

The Agent stated that the \$200.00 unpaid rent indicated in the 10 Day Notice related to unpaid fees for parking. The Landlord testified that the requirement for the Tenant to pay for parking was not a term of the tenancy agreement. The Tenant argued that, as the \$200 did not relate to unpaid rent, the Landlord did not have a right to serve him with the 10 Day Notice.

Paragraph 6 of the tenancy agreement states that the rent for the premises is \$1,275 and "N/A" for Monthly Parking. Immediately below it states:

Unless specified herein, parking facilities are not included in the Rent and, if available, will be governed by a separate parking agreement.

Based on the testimony of the Agent and Tenant and the tenancy agreement, I find that there is no contractual obligation of the tenant to pay for parking pursuant to the terms of the tenancy agreement.

The Agent conceded that the 10 Day Notice was served on the Tenant by the onsite manager by mistake as the tenancy agreement did not require the Tenant pay for parking. The Agent agreed to withdraw the 10 Day Notice at the hearing.

Analysis:

The Agent has withdrawn the 10 Day Notice on behalf of the Landlord and the notice has no further force or effect. As the 10 Day Notice the 10 Day Notice is of no further force or effect, it is unnecessary for me to consider the Tenant's claims for cancellation of the 10 Day Notice and for an order that the Landlord comply with the Act, Regulations or tenancy agreement. I dismiss the Tenant's claims made in this Application.

Conclusion

The 10 Day Notice dated May 3, 2021 has no force or effect. The tenancy continues until it is 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: October 5, 2021