



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by one of the tenants.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally to the building manager on December 8, 2021 in accordance with Section 89. Based on the undisputed testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Should the tenants fail to succeed in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Analysis

Residential Tenancy Branch Rule of Procedure 6.6 states:

“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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.”

In the case before me, the burden rests with the landlord to attend the hearing and present evidence to establish that they had cause to end the tenancy in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenants on December 1, 2021.

In addition, Rule of Procedure 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. And Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I note that the landlord did not attend this hearing and did not submit any evidence in support of the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 1, 2021.

For these reasons, I find the landlord has failed to provide or present any evidence that there was any outstanding rent owed to the landlord on the date that the landlord issued the 10 Day Notice to End Tenancy on December 1, 2021.

Conclusion

Based on the above, I order the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 1, 2021 is cancelled and of no force or effect and that the tenant will continue until ended in accordance with the *Act*.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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: March 17, 2022

Residential Tenancy Branch