



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On February 8, 2022, the Tenant made an Application for Dispute Resolution 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”) and seeking to recover the filing fee pursuant to Section 72 of 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 and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package and some evidence was served to the Landlord by registered mail on or around February 15, 2022, and the Landlord confirmed receiving this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing package and some evidence.

The Tenant advised that she served additional evidence to the Landlord by mail on April 23, 2022, and the Landlord confirmed that this evidence was received. Based on this

undisputed testimony, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that he served the Tenant with his evidence package, but he was confused about when he did this. The Tenant confirmed that she received the Landlord's evidence under her door on April 23, 2022. While this evidence was not served in a manner in accordance with Section 88 of the *Act*, as this evidence appears to have been served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

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 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

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 originally started on July 1, 2004, that the rent was currently established at an amount of \$894.00 per month, and that it was due on the first day of the month. A security deposit of \$350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Notice was served by being posted to the Tenant's door on February 8, 2022. The Notice indicated that \$894.00 was owing for rent on February 1, 2022, as well as a \$30.00 late fee. However, the Landlord was informed that he cannot include this late fee as unpaid rent on the Notice. The effective end date of the tenancy was noted as February 18, 2022.

The Landlord acknowledged that rent had, in fact, been paid in full by the Tenant on February 1, 2022.

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* then 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.

In the case before me, the undisputed evidence is that the Tenant did pay the rent in full on February 1, 2022. Therefore, I find that there was no basis for the Landlord to serve the Notice. Based on my assessment of the totality of the evidence before me, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy for unpaid rent. As a result, I find that the Notice is of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from **July 2022** rent, or from a subsequent month's rent after that date.

Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of February 8, 2022 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: May 13, 2022

Residential Tenancy Branch