



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. One Tenant, RC, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenants with the 10 Day Notice which was dated February 15, 2022 by posting the notice on the Tenants' door. Tenant RC confirms receipt of the 10 Day Notice. I find the 10 Day Notice was sufficiently served on the Tenants on February 15, 2022 according to Section 71(2) of the Act.

Tenant RC testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on May 20, 2022 by Canada Post registered mail (the “NoDRP package”). Tenant RC referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on May 25, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

Tenant RC confirmed that this tenancy began as a fixed term tenancy on April 1, 2021. The fixed term ended on March 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,916.50 payable on the first day of each month. The Tenants are also responsible for parking for \$70.00 per month, and storage for \$20.00 per month. A security deposit of \$958.25 and a pet damage deposit of \$958.25 were collected at the start of the tenancy and the Tenant believes that the Landlord still holds these deposits. Tenant RC vacated the rental unit in early April, Tenant GB still resides in the rental unit.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,040.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 28, 2022.

Tenant RC testified that there were issues paying rent through the Landlord’s rent paying portal. The Landlord did not attend this hearing to provide evidence of any outstanding rent.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *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.*

The Tenants were sufficiently served with the 10 Day Notice on February 15, 2022. The Tenants applied for dispute resolution on February 19, 2022, within five days after receiving the 10 Day Notice pursuant to Section 46(4)(b) of the Act. The Landlord did not attend this hearing to provide evidence about outstanding rent owing or what it is they are still seeking. Due to the Landlord's non-attendance, I find the Landlord has not proven, on a balance of probabilities, the grounds on which the 10 Day Notice were based. I grant the Tenants their application to cancel the 10 Day Notice.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's 10 Day Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

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

Dated: June 15, 2022

Residential Tenancy Branch