



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was reconvened for a matter originally scheduled to be heard on May 30, 2022, regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 22, 2022 (the "10 Day Notice") pursuant to section 46.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Landlord to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and access code had been provided in the notice of dispute resolution proceeding dated May 31, 2022. The hearing access code is referenced on the cover page of this decision. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

I advised the Tenant that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. The Tenant confirmed she was not recording this dispute resolution hearing.

Preliminary Matter – Landlord's Non-attendance

Rules 7.3 and 7.10 of the Rules of Procedure state as follows:

7.3 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.

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

Records from the Residential Tenancy Branch indicate that notices of this reconvened hearing were sent to the parties via email on May 31, 2022. I find the Landlord was duly served with notice of this reconvened hearing by the Residential Tenancy Branch.

Having found the Landlord to be duly served, I directed that the hearing be conducted in the absence of the Landlord.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant testified she sent the original notice of dispute resolution proceeding package for the May 30, 2022 hearing and her documentary evidence (collectively, the “NDRP Package”) to the Landlord via email on March 29, 2022. As the Landlord attended the original hearing on May 30, 2022, I find the Landlord to have been sufficiently served with the NDRP Package on March 29, 2022, pursuant to section 71(2) of the Act.

Issue to be Decided

Is the Tenant entitled to cancel the 10 Day Notice?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement into evidence. The Tenant confirmed the following particulars of the tenancy:

- The tenancy commenced on October 1, 2021 for a fixed term ending on September 30, 2022, and is to continue thereafter on a month-to-month basis.
- Rent is \$950.00 per month, due on the first day of each month.
- The Tenant paid a security deposit of \$475.00 and a pet damage deposit of \$475.00, which are held by the Landlord.

The Tenant testified that on December 21, 2021, the Landlord showed up asking for 2 months of unpaid rent.

The Tenant submitted a copy of the 10 Day Notice into evidence. The 10 Day Notice is dated March 22, 2022, and has an effective date of April 10, 2022. The Tenant acknowledged she received a copy of the 10 Day Notice on March 24, 2022.

The Tenant testified that the Ministry of Social Development and Poverty Reduction (the “Ministry”) pays her rent directly to the Landlord each month.

The Tenant submitted a screenshot of a Confirmation of Assistance from the Ministry dated March 1, 2022. The Confirmation of Assistance indicates a “third party payment” to the Landlord in the amount of \$950.00.

The Tenant testified she was told by the Ministry that the Landlord has received the rent he claims to be owed.

The Tenant testified she gave the Landlord permission to look into her file with the Ministry on June 15, 2022.

The Tenant stated that as far as she knows, rent has been paid in full.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

In this case, the Tenant acknowledged she received a copy of the 10 Day Notice on March 24, 2022. Pursuant to section 46(4) of the Act, the Tenant had until March 29, 2022 to pay the overdue rent or dispute the 10 Day Notice by making an application for dispute resolution. Records from the Residential Tenancy Branch indicate that the Tenant submitted this application for dispute resolution on March 25, 2022. Accordingly, I find the Tenant made this application within the time period required by section 46(4) of the Act.

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.

In particular, Rule 6.6 of the Rules of Procedure states that a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

The Landlord did not attend this reconvened hearing, despite having been duly served with notice of this reconvened hearing by the Residential Tenancy Branch.

I note the Landlord has submitted some documentary evidence for this application. However, Rule 7.4 of the Rules of Procedure states:

7.4 Evidence must be presented

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.

In this case, I find I am unable to make any findings on a balance of probabilities based on the Landlord's documentary evidence alone, without presentation and oral argument from the Landlord.

The Tenant's testimony is that her rent has been paid by the Ministry.

Thus, in the absence of any submissions from the Landlord, I find the Landlord has not met the onus of justifying the grounds for issuing the 10 Day Notice.

Accordingly, I order that the 10 Day Notice be cancelled.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. The tenancy shall continue.

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: June 23, 2022

Residential Tenancy Branch