



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- cancellation of the landlords’ 10 Day Notice pursuant to section 46

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Both parties attended the hearing with the landlords being represented by landlord A.B., while the tenants were represented by tenant E.S.

The tenants confirmed receipt of the 10 Day Notice to End Tenancy (“10 Day Notice”) dated April 11, 2022. Pursuant to section 89 of the *Act* the tenants are found to have been served with this notice in accordance with the Act.

The landlord disputed having received the tenants’ application for dispute and any associated evidence. Tenant E.S. explained that his wife served the application for dispute and evidence in person, however, E.S. could not provide a date of service.

Section 88 and 89 of the *Act* provide specific direction on the manner in which documents are required to be served on a person. Further *Policy Guideline #12* notes, “Failure to prove service may result in the matter being dismissed, with or without to leave reapply...when one or more parties on an application for dispute resolution have not been served the Arbitrator’s decision or order will indicate this. The matter may proceed, be adjourned, dismissed with or without leave to reapply.”

I find that while the tenants failed to adequately demonstrate that they served the landlords in accordance with the *Act* with either their application for dispute or their evidence, this matter shall proceed for the reasons noted below.

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant explained they began living in the unit on December 1, 2020. Current rent is \$2,588.00 per month and a security deposit of \$1,275.00 was paid at the outset of the tenancy and continues to be held in trust.

On April 11, 2022, the landlords issued a 10 Day Notice for unpaid rent of \$1,575.00. The landlord testified that the tenants had paid \$1,000.00 on April 1, 2022, and then nothing until the issuance of the 10 Day Notice. On April 14, 2022, the tenants paid \$2,000.00 representing full payment of the \$1,575.00 listed on the notice, as well as a surplus of \$425.00.

Analysis

Section 46(1) & (4) of the *Act* states as follows:

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice...within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect

After having considered the landlord's testimony, I find that rent was paid three days (April 14, 2022) after the issuance of the 10 Day Notice on April 11, 2022, therefore in accordance with section 46(4) of the *Act* I find the 10 Day Notice dated April 11, 2022, is of no effect.

The tenants were successful in cancelling the 10 Day Notice dated April 11, 2022.

Conclusion

The tenants were successful in cancelling the landlords' 10 Day Notice to End Tenancy dated April 11, 2022. This tenancy shall continue 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: August 15, 2022

Residential Tenancy Branch