



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, FFT
Landlord: OPR, FFL

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated April 21, 2022 (the "10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for the Tenant's application from the Landlord pursuant to section 72.

This hearing also dealt with the Landlord's cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to sections 46 and 55; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Tenant's agent CT attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions on the Tenant's behalf. The Tenant was also present.

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 participant access code had been provided in the notices of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant, CT, and I were the only ones who had called into the hearing.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Dispute Address

CT confirmed the rental unit is one of two basement suites located on the rental property. Based on CT’s testimony, I have amended the dispute address.

Preliminary Matter – Service of Dispute Resolution Documents

CT testified the Tenant served the Landlord with the notice of dispute resolution proceeding package and the Tenant’s documentary evidence (collectively, the “NDRP Package”) by registered mail on May 5, 2022. The Tenant submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Tracking information from Canada Post shows that the package was delivered on May 19, 2022. Based on the foregoing, I find the Landlord was served with the NDRP Package in accordance with sections 88(c) and 89(1)(c) of the Act on May 19, 2022.

CT testified the Tenant only received a “front sheet” from the Landlord’s cross-application. CT testified the Tenant did not receive a copy of the Landlord’s notice of dispute resolution proceeding package or supporting documentary evidence. Rule 3.3 of the Rules of Procedure require that evidence for a cross-application be received by the other party not less than 14 days before the hearing. Based on CT’s undisputed testimony, I find that the Landlord did not serve the Tenant in accordance with Rule 3.3. Accordingly, I exclude the Landlord’s documentary evidence from consideration in this hearing.

Preliminary Matter – Dismissal of Landlord’s Application

Rules 7.3 and 7.4 of the Rules of Procedure state:

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.

7.4 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.

As the Landlord did not attend the hearing for his own application, and in the absence of any submissions or substantive evidence, I order the Landlord's application dismissed without leave to re-apply. This hearing continued in the absence of the Landlord.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

This tenancy commenced on or around June 1, 2020. Rent was originally \$1,000.00 due on the first day of the month. The Tenant paid a security deposit of \$500.00 which is held by the Landlord.

CT explained that the Tenant does not have a copy of the tenancy agreement at this time. CT testified the Landlord did not provide a copy to the Tenant when requested.

CT stated that the Tenant had received an incorrect notice of rent increase dated December 1, 2021 (the "Notice of Rent Increase") from the Landlord. A copy of the Notice of Rent Increase submitted into evidence shows that rent was misstated as \$1,300.00 per month with a rent increase of \$25.50 effective March 1, 2022. CT testified that these amounts are for the tenant of a neighbouring unit on the rental property. CT noted that the Notice of Rent Increase did not provide a full 3 months' notice as required under the Act.

The Tenant's application materials indicate that the Tenant never received a new Notice of Rent Increase with the correct information and assumed that the incorrect Notice of Rent Increase was for his neighbour.

CT testified that on April 21, 2022, the Tenant found a copy of the 10 Day Notice taped to his door. The 10 Day Notice states that the Tenant failed to pay rent in the amount of

\$30.00 due on April 1, 2022. A copy of the 10 Day Notice has been submitted into evidence.

CT testified that the Landlord has been telling the Tenant he could get more rent for the rental unit. CT testified the Landlord had also said the Landlord's parents want to move into the rental unit, but this did not happen.

CT confirmed the Tenant has been paying \$1,015.00 per month in rent to the Landlord since May 1, 2022.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when 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, I have reviewed a copy of the 10 Day Notice and find that it complies with section 52 of the Act in form and content. Based on CT's testimony, I find the Tenant was served with the 10 Day Notice in accordance with section 88(g) of the Act on April 21, 2022.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until April 26, 2022 to dispute the 10 Day Notice. Records show that the Tenant submitted his application on April 21, 2022. I find the Tenant made his application within the timeline stipulated by section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord did not attend this hearing to discharge his burden of proving the reason for ending the tenancy as stated in the 10 Day Notice. Moreover, I accept CT's

undisputed testimony and the Tenant's evidence that the Notice of Rent Increase received by the Tenant was incorrect in terms of the stated monthly rent, the amount of rent increase permitted, and the effective date of the rent increase. I find the Landlord was not entitled to a \$15.00 rent increase beginning on March 1, 2022 based on the incorrect Notice of Rent Increase. I conclude that the Tenant did not owe rent to the Landlord as stated in the 10 Day Notice.

Accordingly, I order that the 10 Day Notice be cancelled and of no force or effect.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has been successful in cancelling the 10 Day Notice. I award the Tenant reimbursement of his filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of September 2022.

Conclusion

The Landlord's cross-application is dismissed without leave to re-apply.

The 10 Day Notice dated April 21, 2022 is cancelled and of no force or effect.

The Tenant is authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlord for the month of September 2022.

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 22, 2022

Residential Tenancy Branch