



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed her email addresses for service of this decision.

Preliminary Issue- Service

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states:

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 tenant did not attend the hearing the tenant’s evidence is excluded from consideration.

The landlord testified that she did not serve the tenant with her evidence.

Section 3.15 of the Rules states that the Respondent’s evidence must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord testified that her evidence was not served on the tenant. Pursuant to section 3.15 of the Rules, I exclude the landlord’s evidence from consideration due to failure to serve.

Issue

1. Is the tenant entitled to cancellation of the Notice?
2. Is the landlord entitled to an Order of Possession pursuant tot the Notice?
3. Is the landlord entitled to a Monetary Order for Unpaid Rent?

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord’s submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on December 2, 2019 and the tenant is currently residing in the subject rental property.

Monthly rent in the amount of \$1,300.00 is payable on the second day of each month. A security deposit of \$675.00 was paid by the tenant to the landlord.

The landlord testified that she posted the Notice on the tenant's door on May 30, 2022. The tenant filed to dispute the Notice on May 31, 2022. The tenant's application for dispute resolution states that the tenant received the Notice on May 30, 2022 via posting.

The tenant's application for dispute resolution states that he paid the rent.

The landlord testified that the tenant did not pay May 2022's rent which is why the Notice was served on the tenant. The landlord testified that after the Notice was served, sometime in June 2022, a Church made out a cheque on behalf of the tenant in the amount of \$1,300.00 for rent but she did not pick it up until July 4, 2022. The landlord testified that she did not know when in June the cheque was made available.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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 tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Section 46(1) of the *Act* states that 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the burden of proof is on the landlord to prove the validity of the Notice. None of the landlord's evidence was accepted for consideration in this dispute. The landlord testified that the tenant did not pay May 2022's rent. The tenant's application for dispute resolution states that rent was paid. I find that the landlord has not proved, on a balance of probabilities, that rent was not paid as no ledger or other evidence pertaining to rent payments was accepted for consideration. The landlord has not met the required burden of proof, as such, I find that the Notice is null and void.

As the landlord has not proved that the tenant failed to pay rent and the Notice is null and void, I find that the landlord is not entitled to a Monetary Order or an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

The Notice is null and void.

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: September 23, 2022

Residential Tenancy Branch