



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on January 4, 2023 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

C.D. appeared as the Tenant. B.K. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that the Landlord was served his application materials. The Landlord’s agent acknowledges receipt of the Tenant’s application materials without objection. Based on the acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* that the Tenant’s application materials were sufficiently served on the Landlord.

Dismissal of the Application

At the outset of the hearing, I enquired when the Tenant received the 10-Day Notice and was told by him that he found it on his door on the morning of January 5, 2023. I am further advised by the Tenant that he paid the arrears listed in the 10-Day Notice by way of e-transfer sent on the same day. The Landlord’s agent acknowledges receiving the rent either on January 5 or 6, 2023. The Landlord’s agent expressed that she was uncertain why the Tenant filed the application.

Pursuant to s. 46 of the *Act*, a landlord may issue a notice to end tenancy for unpaid rent with an effective date not earlier than 10 days after the date it is received by the Tenant. Further, s. 46(4) of the *Act* states the following:

- 46(4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

I accept the undisputed evidence of the parties that the Tenant received the 10-Day Notice on January 5, 2023 and paid the overdue rent either on the 5th or 6th. In either event, it was paid within 5 days of the Tenant receiving the 10-Day Notice such that the notice is of no force or effect.

The Tenant's application to cancel the 10-Day Notice was unnecessary as he filed it on January 7, 2023, which is after the overdue rent was paid. I find the application was moot before it was filed and it is dismissed on that basis. Given the fact the application was unnecessary, I find that the Tenant should bear the cost of his filing fee. His claim under s. 72 of the *Act* is dismissed without leave to reapply.

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: February 10, 2023

Residential Tenancy Branch