



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant filed an Application for Dispute Resolution (the “Tenant Application”) on November 7, 2022, seeking cancellation of an end-of-tenancy notice served by their Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 17, 2023. The Tenant attended the hearing; the Landlord, as Respondent, did not attend.

Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding

In the hearing, the Tenant presented how they served the Notice of Dispute Resolution Proceeding to the Landlord via registered mail on November 22, 2022. In their evidence, they included a receipt and provided tracking number. The Tenant also stated that they provided the information to the Landlord when the Landlord visited to the rental unit on November 23, 2022. This package included the evidence they prepared for this hearing.

From what the Tenant presented in their description and evidence, I find they served the Landlord adequate notice of this hearing as required. The hearing proceeded in the Landlord’s absence.

Preliminary Matter – additional notice to end tenancy

The Tenant filed this Application in response to the 10-Day Notice to End Tenancy for Unpaid Rent issued by the Landlord on November 6, 2022 (the “November 10-Day Notice”).

The Tenant in the hearing presented that they received an additional 10-Day Notice from the Landlord on March 1, 2023 (the "March 10-Day Notice"). In advance of the hearing, the Tenant provided a copy of this document as evidence to the Residential Tenancy Branch.

I allow the Tenant to amend their Application to incorporate the March 10-Day Notice. I find this was reasonably anticipated in the circumstances, with the Landlord aware of the upcoming hearing in advance, with the opportunity to attend to speak to the matter.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the November 10-Day Notice?

Is the Tenant entitled to a cancellation of the March 10-Day Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

In the hearing, the Tenant provided the basic details about the tenancy. The agreement started in March 2021, with rent at \$2,000 per month payable on the first day of each month.

In their evidence, the Tenant presented the copy of the November 10-Day Notice. This sets out an end-of-tenancy date of November 16, 2022, ostensibly for the rent amount of \$2,000 not paid by the Tenant on November 1, 2022. The document does not specify the rental unit address where required.

In their evidence, the Tenant presented the copy of the March 10-Day Notice. This shows the Landlord's signature of March 1, specifying the end-of-tenancy date as March 11, 2023. The document sets out that \$10,000 was unpaid by the Tenant as of March 1, 2023.

The Tenant set out that they received this March 10-Day Notice attached to the rental unit door on March 1.

The Tenant also set out that they will move out from the rental unit at the end of April 2023. They had a discussion with the Landlord and the Landlord's agent, with their agreement that

the Tenant would pay the rent amount owing, in full, in addition to April 2023 rent. This totals \$12,000.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice to end tenancy.

The *Act* requires that notices to end tenancy by a landlord be in the approved form. More basically, regarding the validity of the notice to end tenancy, s. 52 states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,
- . . . and
- (e) when given by a landlord, be in the approved form.

The copy of the November 10-Day Notice that the Tenant submitted for this hearing bears no address for the rental unit where required on that form. As per s. 52, I find this invalidates that November 10-Day Notice. I order that document cancelled, and the tenancy will not end for this reason.

I find the Landlord issued and served March 10-Day Notice on March 1, 2023. Proof of this is their signature on that document beside that date, as well as the setting of March 11, 2023 as 10 days past the date of issuance.

The reason for the Landlord issuing the March 10-Day Notice, on its face, shows the Landlord issued this for the Tenant's non-payment of previous amounts of rent, as well as the March 2023 rent due that same day.

The Landlord issued this document before the end of the day on which the rent amount – including March 2023 – was due. This is not allowed as per s. 46 of the *Act* which provides strictly in its wording: "A landlord may end a tenancy if rent is unpaid on any day after the day it is due. . . ." The rental payment day, as stated by the Tenant in the hearing, was not complete before the Landlord issued this notice. I find the March 10-Day Notice is not valid for this reason, and I order it cancelled.

Because the Tenant was successful in this Application, there is no Order of Possession to the Landlord, and the tenancy shall not end by reason of either the November 10-Day Notice, or the March 10-Day Notice.

Conclusion

For the reasons outlined above, I order that both the November 10-Day Notice and the March 10-Day Notice are cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 20, 2023

Residential Tenancy Branch