



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Metropole Apartments Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”).

SC (the “tenant”) and DD (the “landlord”) appeared at the hearing.

The tenant testified that they served the landlord with the Notice of Dispute Resolution Proceeding and their evidence on April 12, 2023, by registered mail and that further to this, they sent the landlord additional evidence on April 18, 2023, by registered mail. DD acknowledged receipt of both registered mail packages.

DD testified that they served the tenant with their evidence in response to the tenant’s application by posting it to the door or the tenant’s rental unit in a brown envelope and by sending a copy to the tenant’s email address on April 20, 2023.

The tenant denied receipt of the same but conceded that they received numerous items attached to the door of their unit upon their release from hospital on April 21, 2023, and that they had not opened all of them.

Based on the foregoing, I find that pursuant to s. 71(2) of the Act that the parties were sufficiently served with the required documents for the purposes of this hearing.

Preliminary Matters

During the hearing the landlord provided the name of the corporate landlord. Pursuant to section 64(3)(a) of the Act, I amend the tenant’s application to include the corporate landlord.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that they entered into a written tenancy agreement on October 31, 2020. Rent is \$983.28 payable on the first of the month. The landlord collected a security deposit in the amount of \$475.00 and a pet deposit in the amount of \$200.00 which they continue to hold in trust.

The landlord testified that they served the tenant with the 10-Day Notice by attending the hospital where the tenant had been admitted and providing a copy to a nurse on March 22, 2023. The landlord testified that they were assured that the tenant would be given the 10-Day Notice. The landlord testified that following this, they returned to the rental unit and posted a copy of the Notice to the door of the tenant's rental unit.

The landlord testified that the 10-Day Notice was issued because the tenant failed to pay \$20 in utilities which is the monthly fee for laundry use and is stated in the Addendum to the original lease agreement. The landlord further testified that the 10-Day Notice was issued because the tenant failed to pay the rent increase of \$19.28 which was due on March 1, 2023.

The landlord testified that since the 10-Day Notice was issued, the tenant has paid the outstanding rent and utilities in full.

The tenant testified that she was admitted to hospital on March 16, 2023, and was not discharged until April 21, 2023. In support of this, the tenant has provided a letter from PN dated April 12th, 2023, indicating that the tenant had been hospitalized since March 16th, 2023, and did not have an estimated discharge date at that time.

The tenant testified that they were authorized to leave the hospital for a three-hour period on March 29th and returned to their rental unit with PN. The tenant testified that around this time, PN was in contact with the landlord and became aware of the eviction notice. The tenant testified that PN was able to locate the 10-Day Notice at the hospital and provided it to them on or about March 29th, 2023.

The tenant testified that on March 30th, 2023, they paid the outstanding rent and utilities in addition to the late fees by sending a direct deposit to the landlord in the amount of \$60.00. The landlord confirmed receipt of the same.

Analysis

Section 88 of the Act lists the methods of service that are permitted when serving a 10-Day Notice. In this case, the landlord testified that they served the tenant by leaving a copy of the 10-Day Notice at the hospital where the tenant was admitted. While this is the method that eventually allowed the tenant to locate the 10-Day Notice, I find that this was not an approved method of service and I do not accept that the tenant was served in this manner on March 22, 2023.

The landlord testified that after having attended the hospital on March 22, 2023, they returned to the rental unit and posted a copy of the 10-Day Notice to the door. I accept this is an approved method of service under section 88 of the Act. However, given that the landlord's evidence is that they were aware that the tenant was admitted to hospital at the time they posted the 10-Day Notice to the door, I find that the deeming provision of section 90 of the Act is rebutted.

The accepted evidence before me is that the tenant received the 10-Day Notice on or about March 29th, 2023. I find that March 29th, 2023, is the date the tenant is deemed to have received the 10-Day Notice.

The 10-Day Notice requires the tenant to pay the outstanding rent/and or utilities within 5 days of receipt of the 10-Day Notice. In this case, the parties agree that the tenant paid the outstanding rent and utilities on March 30th, 2023, or one day after they received the Notice, thus meeting the 5-day deadline. For this reason, I am cancelling

the 10-Day Notice. The tenancy shall continue until such time as it is ended in accordance with the Act.

Caution

The Addendum to the Tenancy Agreement states the following with regard to laundry:

Laundry Room - Laundry Smart City Card

The Property Manager will distribute a Laundry Smart Card upon Each New Tenancy

A Smart Card Laundry Card Deposit Fee of \$20.00 will be charged for a Deposit

An Additional Smart Card Laundry Card Deposit Fee of \$20.00 will be charged for a Lost Card

The Smart Card Laundry Card Must be Returned to the Property Manager Upon Move Out

I do not interpret the above term of the Tenancy Agreement to require the tenant to pay \$20 per month for the use of laundry. The landlord is cautioned to comply with the terms of the Tenancy Agreement and must not charge the tenant \$20 per month for laundry.

Conclusion

The 10-Day Notice is cancelled and of no force or effect.

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: May 17, 2023

Residential Tenancy Branch