



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenant filed their application on September 21, 2023, and seeks the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the Notice).

The Landlord filed their application on September 20, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- Authorization to recover their filing fee from the Tenants.

Both parties acknowledged being served with their counterparty’s application and evidence by registered mail, in accordance with the *Act*.

Background and Evidence

The parties were unable to agree on the exact start date of the tenancy. The Landlord’s agent, C.H., testified that the Tenant is not the original tenant that occupied the Rental Unit. The Landlord purchased the building in which the Rental Unit is in sometime in 2016 and discovered that the Tenant is not a named Tenant on the written tenancy agreement, but they nevertheless accepted rent from the Tenant. The Tenant testified that they moved into the Rental Unit in 2012 to live with their cousin, who moved out of the Rental Unit on or about the time the Landlord purchased the Rental Unit.

Notwithstanding the disagreement on the exact start date of the tenancy, the parties agreed that there is a tenancy relationship between the parties and that the current rent is \$1,162.00. The parties also agree that the Landlord is currently holding \$440.00 in security deposit in trust for the Tenant.

C.H. testified that in “late August”, the Tenant reached out to them, by phone and text message, to ask for an extension of the due date for September 2023 rent. C.H. reluctantly agreed after the Tenant explained that they have been subject to a scam. C.H. initially testified that they agreed to extend the due date and that they requested

the Tenant to send them the police report. More specifically, C.H. testified that they “gave [the Tenant] the benefit of doubt” and agreed to extend the due date to September 15, 2023.

Later during the hearing, C.H. testified that they agreed to extend the September 2023 due date to September 15, 2023, on the condition that the Tenant sends them the filed police report so they can be sure the Tenant is not making excuses.

I have viewed the text message correspondence that both parties referred to and submitted as evidence. In a text message sent by the Tenant to C.H. at 6:09 pm on an unidentifiable date (the text message does not show a date), the Tenant asks for “more time” and states that “I can provide the police report if you need it”. At 6:18 PM, C.H. responds to the Tenant and states:

“Hey, okay. If you can please provide me with a copy of the police report you have filed, I am able to extend the date we receive the rent from you on the 15th for this month only. You will have to unfortunately include the late fee though with the payment. Please send me the report right away through email or text. [email address redacted]. I hope it works out for you as well.”

(the “Extension Text”).

At 6:24 pm, the Tenant responds to the Extension Text and writes “thank you for understanding. This is definitely only for this month. I will also forward a copy of the report to you. Thank you again.”

Evidence submitted by both parties shows that the Tenant sent their police file number to C.H., by text message, on September 8, 2023, and explained that the police report was filed on September 2, 2023. The Tenant further explained that they have learned that the Police will not provide “physical copies” and that the Tenant must apply for it on “ATIP”. C.H. then replied to the Tenant’s message on September 9, 2023, and stated that the Tenant has until the end of “tonight” to provide their police report and if they do not, the Landlord will issue them a 10-Day Notice to End Tenancy for Unpaid Rent.

The parties agreed that the Landlord issued the Tenant the Notice, on September 11, 2023, citing unpaid rent for the month of September, in the amount of \$1,194.00 as cause to end the tenancy (C.H. testified that the additional \$30.00 was for unpaid parking fees).

On September 13, 2023, the Tenant emailed C.H. a copy their police report request summary. C.H. replied and stated that this is not the police report.

The Tenant testified that they attempted to pay their rent on September 15, 2023, by depositing a cheque after a bank teller informed them that the cheque would be deposited on the same date. On September 16, 2023, the Tenant discovered that money had not left their bank account. On September 19, 2023, the Tenant paid their September rent by taking cash to the bank and depositing it into the Landlord's bank account.

The Tenant testified that they did not dispute the Notice within the 5-day allotted time under the *Act* because they believed their cheque would be cleared on September 15, 2023.

C.H. provided undisputed testimony that when they received the Tenant's September 2023 rent, the Landlord issued the Tenant a use and occupancy only receipt to indicate to the Tenant that they are still intending to seek an Order of Possession.

Analysis

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

In this case the parties agree that the Tenant paid their September rent on September 19, 2023. Section 46 of the *Act* states that a landlord may issue a 10 Day Notice to End a Tenancy if rent remains unpaid after the day rent is due.

Based on the evidence before me, I find that the due date for September 2023 rent was modified by the parties and changed from September 1, 2023, to September 15, 2023. The Landlord's Notice of September 11, 2023, was therefore given prematurely and it is of no force or effect.

I make the above finding by relying on the Extension Text and the testimony of the parties during the hearing. C.H.'s initial recollection of events made no mention of an extension conditioned on a police report being sent to them. C.H. modified their testimony when I raised concerns during the hearing that the Landlord may have issued the Notice prematurely.

In the Extension Text, two sentences are important to my finding:

- (1) "If you can please provide me with a copy of the police report you have filed, I am able to extend the date we receive the rent from you on the 15th for this month only."
- (2) "Please send me the report right away through email or text."

I have reviewed the Extension Text in context based on the Tenant's prior message to the Landlord and on its own. In neither of the above sentences does C.H. tell the Tenant that the extension to September 15, 2023, is conditioned solely on the Tenant providing the Landlord with a physical copy of their police report.

The Notice is therefore canceled and is of no force or effect. I dismiss the Landlord's application in its entirety, without leave to reapply.

Conclusion

The Tenant's application to dispute the Notice is successful. This tenancy continues until it is ended in accordance with the *Act*.

The Landlord's September 11, 2023, Notice is canceled and is of no force or effect. The Landlord's application is dismissed in its entirety.

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: November 03, 2023

Residential Tenancy Branch