

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant asserts that they served a copy of the Proceeding Package and their evidence in one package, in person to the manager of the building D.L. on or about August 5, 2024.

In the absence of evidence to the contrary and with knowledge that the Landlord withdrew their cross-application of this matter before the hearing such that they were aware of the proceedings, I find that the Proceeding Package was served in accordance with sections 88(c) and 89(1)(c) of the Act, by leaving a copy with an agent of the Landlord on August 5, 2024.

The Landlord submitted no response evidence to be considered.

Preliminary Matters

The Landlord did not attend the hearing. Rule 7.3 of the Rules of Procedure permits that an arbitrator may conduct a dispute resolution hearing in the absence of a party if a party or their agent fails to attend the hearing. I conducted this hearing in the absence of the Landlord.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background

The Tenant asserts that a 10 Day Notice dated June 17, 2024, with an effective date of June 27, 2024, was posted to the door of their residence on or about July 27, 2024. The Tenant asserts that they filed their application for dispute resolution three days later, on July 30, 2024, and that the dates on the 10 Day Notice are in error or that the Landlord served the 10 Day Notice long after it was dated and issued.

The Tenant asserts that an agreement had been reached between the parties, and that the Landlord has withdrawn the 10 Day Notice dated June 17, 2024.

The Landlord had filed their own cross-application of this matter on July 29, 2024, but withdrew their application on August 20, 2024.

Analysis

Should the Landlord's 10 Day Notice be cancelled?

Section 46 of the Act says that upon receipt of a 10 Day Notice, the Tenant must, **within five days**, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the Tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the end of the tenancy under section 46(5).

In the absence of evidence to the contrary, I find on a balance of probabilities that the 10 Day Notice was posted to the door of the Tenant's residence on July 27, 2024, and received by them same day. I find that the effective date of the 10 Day Notice is therefore August 6, 2024, pursuant to section 53 of the Act. I further find that the Tenant applied to dispute the 10 Day Notice within the allowable timeframe under the Act (within 5 days of receipt of service).

In an application to dispute a 10 Day Notice, the Landlord bears the burden of proving the validity of the notice and the date on which it was served. The Landlord did not attend this hearing, and as a result, I find that they have failed to establish the validity of the notice. In consideration of the foregoing, I find it appropriate to grant the Tenant's application for cancellation of the 10 Day Notice under sections 46 and 55 of the Act.

The 10 Day Notice dated June 17, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The Tenant's application is granted for cancellation of the One Month Notice under sections 46 and 55 of the Act.

The 10 Day Notice of June 17, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

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

Dated: September 4, 2024

Residential Tenancy Branch