



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR, FFT

Introduction

The hearing was convened following two applications for dispute resolution (Applications) from the Tenant under the *Residential Tenancy Act* (the Act), which were joined to be heard simultaneously.

In their Applications the Tenant seeks the following:

- Orders cancelling two 10 Day Notices to End Tenancy for Unpaid Rent under section 46(4)(b) of the Act; and
- To recover the cost of the filing fees for their Applications under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding and Evidence

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Proceeding Package (the Materials) and the other's evidence. Based on their testimonies I find that each party was served with the Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issue – Form and Content of Notices to End Tenancy

One of the Notices to End Tenancy the Tenant disputes takes the form of a letter dated November 8, 2024 (the Letter). Whilst reference to section 46 of the Act is made in the Letter, I find the document is not on the approved form, which is a requirement of a Notice to End Tenancy given by a landlord, per section 52(e) of the Act.

Whilst section 10(2) of the Act states that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used, in this case I find the Landlord omits significant amounts of information contained in the approved form (RTB form #30) and the Letter represents a substantial departure from the correct approved form. As such, I order the Letter is of no force or effect since it does not comply with section 52 of the Act.

The Tenant also requests the cancellation of a Notice to End Tenancy for Unpaid Rent (the Notice) which I find is on the approved form.

Issues to be Decided

1. Is the Tenant entitled to an order canceling the Notice?
2. If not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover the cost of the filing fees for their Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on February 1, 2020 on a month-to-month basis.
- Rent is currently \$1,741.00 per month due on the first day of the month.
- A security deposit of \$825.00 was paid by the Tenant to the former owner of the rental unit, which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant still occupies the rental unit.

The Landlord's Agent testified the Landlord completed the purchase of the rental unit on November 15, 2023.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed and dated November 22, 2024, and provides an effective date of December 6,

2024. The reason for ending the tenancy, per the Notice is the Tenant has failed to pay rent of \$1,741.00 due on November 1, 2024.

The Landlord's evidence is as follows. The Tenant's cheque as payment for rent due November 1, 2024 was received, but was rejected by the Landlord's bank when deposited. As a result, the Letter was served to the Tenant on November 8 and the Notice was given November 22.

The Tenant has not made further attempts to pay the rent due November 1, 2024, though payment for December's rent appears to have gone through for now. The Tenant pays rent through official cheques and has done since the Landlord took ownership of the rental unit. There have been no previous issues with the official cheques failing to deposit, besides the one for rent due November 1.

The Landlord takes the position the Letter clearly outlined the payment for November 1, 2024 did not go through. Besides the Notice, there was no other communication with the Tenant about the issue.

The Landlord submitted a record of banking transactions showing a credit memo for \$1,741.00 on November 5, 2024 then a returned cheque for the same amount on November 7 with the accompanying memo "Not Eligible for Clear". A member of staff at the Landlord's bank confirmed to the Landlord's Agent the payment did not go through due to insufficient funds, though no records to corroborate this were submitted.

The Tenant responded as follows. They pay rent through official money orders, that have been successfully deposited with no issues in the past. Per the Tenant, they are unable to get a new money order as the funds have left their account.

The Tenant argued there is no evidence their money order was returned, such as a stamped copy of the order from the Landlord's bank indicating the same.

The Tenant stated they did not understand from the Letter that the November payment had not gone through, though after receipt of the Notice, they spoke with their credit union who stated it is impossible for a money order to be returned as NSF.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Section 46(4) of the Act states that a tenant may dispute a Notice to End Tenancy for Unpaid Rent within five days of receipt.

I find that the Notice was issued on November 22, 2024, the Tenant acknowledged receipt on November 23, and the Tenant's Application was submitted on November 25. Given this, I find the Tenant disputed the Notice within the timeframe set out in section 46(4) of the Act.

It was undisputed that the Tenant provided an official cheque, numbered 011528 (the Official Cheque), to the Landlord on November 1, 2024 as payment for November's rent. Based on the evidence before me I find the Landlord attempted to deposit a cheque on November 5, and the payment returned on November 7. The banking records do not indicate these transactions relate to the Official Cheque.

Though the Landlord took the position the transactions seen in the banking related to the Official Cheque, this was unsupported by documentary evidence. Further, the Landlord claims the reason for the return of the Official Cheque was due to insufficient funds. On this last point, beyond the Landlord's hearsay evidence, to which I attribute no weight, I found nothing to support this notion.

The transaction on November 7, 2024 states “Not Eligible for Clear” and makes no mention of insufficient funds. The Landlord provided no records from their bank to indicate insufficient funds was the reason for the reversal. I find the copy of the Official Cheque provided as evidence does not mention the Tenant, as is typical for bank drafts, as it would draw on the funds of the financial institution that issued the Official Cheque and not the Tenant’s own account, which would be the case for regular cheques.

In these circumstances, I find the Landlord has failed to establish the Notice was issued for a valid reason, namely, the non-payment of rent. I find the Tenant met their obligations under section 26 of the Act to pay rent when it is due under the tenancy agreement and the Landlord has failed to establish any purported issues with the Official Cheque depositing are to do with the Tenant.

Based on the above, I grant the Tenant’s Application for cancellation of the Notice. I order the Notice to End Tenancy for Unpaid Rent dated November 22, 2024 cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72(2)(a) of the Act. I am not inclined to authorize the Tenant to recover the cost of filing both Applications, since it was only necessary to file one. The Tenant had the option to amend their existing Application, rather than submit a second one and I find the Landlord should not be prejudiced by two Applications being submitted.

Conclusion

The Application is granted. The Notice is cancelled.

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: December 06, 2024

Residential Tenancy Branch