



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DENMAK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR-DR, FFL, CNR, MT, RP

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities and to recover the fee for filing this Application for Dispute Resolution.

The male Agent for Landlord stated that on March 30, 2018 he personally served the Tenant with the Landlord's Application for Dispute Resolution and the Notice of Hearing. The Tenant acknowledged receipt of these documents and I accept that she was served with them in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for more time to apply to cancel that Notice to End Tenancy, and for an Order requiring the Landlord to make repairs to the rental unit. At the hearing the Tenant withdrew the application for an Order requiring the Landlord to make repairs to the rental unit.

The Tenant stated that his Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord's service address, via registered mail, on March 23, 2018. The Tenant cited a Canada Post tracking number that corroborates this testimony. The Tenant stated that these documents were not claimed by the recipient and that they were, therefore, returned to her by Canada Post. The female Agent for the Landlord stated that the Landlord did not receive notice from Canada Post regarding this registered mail.

The parties were advised that I would consider adjourning this hearing for the purposes of providing the Tenant with the opportunity to re-serve his Application for Dispute Resolution. The female Agent for the Landlord stated that she would prefer the hearing not be adjourned. She stated that she is willing to accept that the Tenant filed the aforementioned Application for Dispute Resolution and to proceed with the hearing without physically viewing the Application. As the Landlord is willing to respond to the Tenant's Application for Dispute Resolution without physically viewing the document, I find that I am able to proceed with the hearing even though the Tenant's Application for Dispute Resolution was not received by the Landlord.

On March 26, 2018 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch. The male Agent for the Landlord stated that this evidence was personally served to the Tenant with the Application for Dispute Resolution. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 08, 2018 the Tenant submitted a copy of the Notice to End Tenancy and the tenancy agreement to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on May 18, 2018. The Tenant cited a Canada Post tracking number that corroborates this testimony. The Tenant stated that these documents were not claimed by the recipient and that they were, therefore, returned to her by Canada Post. The female Agent for the Landlord stated that the Landlord did not receive notice from Canada Post regarding this registered mail.

On the basis of the undisputed evidence I find that the Landlord did not receive a copy of the Notice to End Tenancy and the tenancy agreement as evidence for these proceedings. As I have already concluded that these documents should be accepted as evidence on the basis of the Landlord's submission of March 22, 2018, I find it is not necessary for me to determine whether they should also be accepted as evidence on the basis of the Tenant's submission of April 08, 2018,

On May 21, 2018 the Tenant submitted 30 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on May 22, 2018. The female Agent for the Landlord acknowledged that this evidence was received. As the Landlord acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the aforementioned evidence has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Preliminary Manner

On May 22, 2018 the Tenant submitted copies of several rent cheques to the Residential Tenancy Branch. The Tenant stated that on May 18, 2018 he attempted to personally serve this evidence to the male Agent for the Landlord. The male Agent for the Landlord agreed that the Tenant attempted to serve him with evidence on May 18, 2018 and that he refused to accept this evidence because he wanted it to be served by registered mail.

I find that the Tenant had the right to personally serve evidence to the Landlord, pursuant to section 88 of the *Act*. I find, therefore, that the male Agent for the Landlord did not have the right to refuse this evidence.

At the hearing the parties were advised that I would accept this evidence because the Agent for the Landlord did not have the right to refuse personal service of the evidence. In retrospect, I find that this evidence should not be accepted as evidence for these proceedings, because it was not physically left with the Agent for the Landlord.

Had the Tenant left the evidence in close proximity of the male Agent for the Landlord after the male Agent for the Landlord refused to accept it, I would conclude that the evidence had been served.

As the evidence was not left with the male Agent for the Landlord I find that it cannot be accepted as evidence for these proceedings. In most circumstances I would adjourn these proceedings to provide the Tenant with the opportunity to re-serve this evidence to the Landlord. In these circumstances, however, I do not find it is necessary to provide the Tenant with the opportunity to re-serve this evidence as I am satisfied that I can adjudicate this matter without considering this evidence.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy for Unpaid Rent?

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement and that the current monthly rent of \$916.70 is due by the first day of each month.

The female Agent for the Landlord stated that on March 10, 2018 a Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, was sent to the Tenant, via registered mail.

The Tenant stated that on March 21, 2018 he received notice from Canada Post that he had registered mail. He stated that on March 23, 2018 he picked up the registered mail, at which time he received the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018.

The Advocate for the Tenant stated that the Canada Post website shows that the mail was delivered to the Tenant on March 23, 2018. The female Agent for the Landlord stated that she has not checked the Canada Post website to determine when this package was delivered to the Tenant.

The Landlord and the Tenant agree that the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, declared that the rental unit must be vacated by March 20, 2018.

The Landlord and the Tenant had not paid the rent of \$916.70 that was due for March of 2018 by March 09, 2018. The parties agree that the rent was paid, in full, on March 23, 2018.

Analysis

On the basis of the undisputed evidence I find that by March 09, 2018 the Tenant had not paid the rent of \$916.70 that he was required to pay required to pay on March 01, 2018.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. As the rent for March of 2018 had not been paid by March 09, 2018, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence I find that on March 10, 2018 the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, was sent to the Tenant, via registered mail.

On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, was not received by the Tenant until March 23, 2018.

Section 46(4)(b) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may dispute the notice by making an application for dispute resolution. The evidence shows that the Tenant filed an Application for Dispute Resolution to dispute the Notice to End Tenancy on March 23, 2018. As this Application was filed within 5 days of the Tenant receiving the Ten Day Notice to End Tenancy, I find that the Application was filed within the timeline established by section 46(4)(b) of the *Act*.

As Application for Dispute Resolution was filed within the timeline established by section 46(4)(b) of the *Act*, I find that there is no need for me to consider the Tenant's application for more time to apply to cancel the Notice to End Tenancy for Unpaid Rent.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant paid the rent, in full, on the same day he received the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, I find that this Notice has no effect. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, and I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord has failed to establish the merits of the Landlord's Application for Dispute Resolution and I therefore dismiss the Landlord's application to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 09, 2018, is granted.

The Landlord's Application for Dispute Resolution is dismissed.

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: June 07, 2018

Residential Tenancy Branch