



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- disputation of a rent increase from the landlord, pursuant to section 42.

The landlord, tenant C.L. and tenant R.L. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they mailed the landlord their application for dispute resolution on January 13, 2020. The landlord testified that she received the tenants' application two to three weeks ago via express post. I find that while express post does not accord with the service requirements of section 89 of the *Act*, the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the landlord confirmed receipt.

Issues to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to cancellation of a rent increase from the landlord, pursuant to section 42 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The subject rental building is a house with an upper and lower suite. The landlord and the tenants entered into a verbal tenancy agreement. The tenants agreed to pay the landlord \$1,300.00 per month for the lower unit. This tenancy is ongoing.

The landlord testified that the tenants were supposed to collect the rent from the upper unit (\$1,300.00 per month) and pay the landlord \$2,600.00 per month but that the upper tenants pay her directly as do the tenants.

Both parties agree that the landlord has served the tenants with multiple notices to end tenancy. The tenants testified that this application to cancel a 10 Day Notice for unpaid rent was made to cancel the 10 Day Notice they received in January of 2020 (the "January 10 Day Notice"). Both parties agreed that the outstanding rent was paid in full within five days of the tenants receiving the January 10 Day Notice. The January 10 Day Notice with an effective date of January 12, 2020 was entered into evidence.

The landlord testified that she is seeking an Order of Possession based on the March 10 Day Notice to end tenancy for unpaid rent (the "March 10 Day Notice"). The March 10 Day Notice was not entered into evidence and neither party filed an application for dispute resolution regarding the March 10 Day Notice.

The tenants testified that they are disputing a notice of rent increase they received from the landlord in June of 2019. The tenants did not enter the notice of rent increase or any other documents into evidence. The landlord only entered page one of the notice of rent increase into evidence. Page two of the notice of rent increase was not entered into evidence, page two contains the information regarding how much the rent was to increase.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect. Since the tenants paid the rent stated as outstanding on the 10 Day Notice within five days of receiving the 10 Day Notice, I find that the January 10 Day Notice is of no force or effect, pursuant to section 46(4) of the *Act*.

As neither party made an application for dispute resolution regarding the March 10 Day Notice, I find that I cannot render a decision on it.

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.

I find that the tenants have not provided the relevant information needed to determine their claim as they did not provide the notice of rent increase they are seeking to have set aside. I therefore dismiss their claim to dispute the rent increase.

Conclusion

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

The tenant's claim to dispute the rent increase 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 *Residential Tenancy Act*.

Dated: March 10, 2020

Residential Tenancy Branch