



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, OPR-DR, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on July 21, 2023 and an Application filed by the Landlord on July 28, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on July 13, 2023
- For the Tenant to repay the cost of the filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Tenant was not served with the Proceeding Package in accordance with section 89 of the Act.
- I find that Landlord was served in person on August 20, 2023, with the Proceeding Package in accordance with section 89 of the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Landlord's evidence was not served to the Tenant in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. If not, is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to recover the filing fee?

Preliminary Matter – Tenant Call In Time

The Tenant joined the hearing at 9:44 am. She indicated that she was late attending due to multiple failed attempts to sign into the conference call system.

Background and Evidence

I have reviewed the evidence submitted by the Tenant and the testimony of both parties, but will refer only to what I find relevant for my decision.

Testimony was provided by the Tenant and Landlord indicating that the tenancy began on December 15, 2020 on a month to month basis, with a monthly rent of \$800.00, due on the tenth day of the month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 were paid to the Landlord and are currently held in trust.

The Tenant testified that she had spoken to the government ministry from whom she receives supplementary housing support on July 4, 2023 and had been advised that her rent support payment cheque for July 2023 would be issued by mail on July 11, 2023. She testified that she informed the Landlord of this the same day as she knew she would be admitted into the hospital for a procedure that week and wanted to ensure rental payment arrangements had been made and that the Landlord was aware that there would be a delay in July's rent.

The Landlord testified that she received a call from the ministry on July 11, 2023 advising her that the Tenant's support cheque was being mailed out.

The Landlord posted a 10 Day Notice for Unpaid Rent on the Tenant's door on July 13, 2023 for unpaid rent in the amount of \$400.00.

The Tenant testified that she saw the notice on her door at 8 am on July 13, 2023, as she was leaving her residence to attend her medical procedure at the hospital. She did not speak to the Landlord at the time but believed her cheque was on route as indicated to her by the ministry on July 4, 2023 and to the Landlord on July 11, 2023. She testified that she was released from the hospital on July 16, 2023 and contacted her Landlord on July 17, 2023 to confirm that she had received the cheque for the balance owing for her July 2023 rent. The Tenant stated that when the Landlord advised her

that she had not yet received the cheque, she went down to the ministry office the following day, July 18, 2023, to inquire into its whereabouts and discovered that it had not been mailed as previously indicated but rather was still sitting in the ministry office waiting to be picked up. The Tenant stated that she took the cheque for the balance of rent owing to her Landlord that same day, July 18, 2023, and offered it to her but the Landlord declined accepting it because it was late and a 10 Day Notice had already been served. The Landlord subsequently accepted the balance of the July 2023 rent approximately 2 weeks later.

The Landlord confirmed these details and sequence of events as testified to by the Tenant.

The Landlord confirmed that the Tenant has paid all rent owing for July to September 2023.

Analysis

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?

Section 46 of the Act states 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(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was duly served to the Tenant on July 13, 2023, and that the Tenant had until July 18, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant and Landlord both testified that, on July 18, 2023, the Tenant offered the Landlord a cheque for \$400.00 for the unpaid rent owing at the time the notice was issued but the Landlord declined accepting it. The Tenant therefore paid the arrears within five days of receiving it.

Based on the above, I find that the Tenant paid the rent owing within five days of having received the notice as required under section 46 of the Act, the Landlord's decision not to accept the offered payment notwithstanding. I hereby grant the Tenant's application to cancel the notice. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

If not, is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to an Order of Possession based on the July 13, 2023 notice. In addition to this, the Landlord did not serve notice of the hearing to the Tenant as required. For both of these reasons, the Landlord's application for an Order of Possession is dismissed without leave to apply.

Is the Landlord entitled to recover the filing fee for this application from the landlord?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for cancellation of the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Landlord's application for an Order of Possession is dismissed without leave to apply.

The Landlord's application for authorization to recover the filing fee for their application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

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: October 18, 2023

Residential Tenancy Branch