



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR FF

Preliminary Issues

The female Tenant requested an adjournment as they were not able to arrange to have a statement from their witness, the cab driver who took the male Tenant to the Landlord's office to pay their rent.

A party to a dispute is required to ensure their witnesses, or their witness statements are made available prior to the scheduled hearing. That being said, I declined the Tenant's request for an adjournment, in accordance with the *Residential Tenancy Branch Rules of Procedure #6.4*, and the hearing proceeded as scheduled.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally on February 23, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants made their application for dispute resolution within the required timeframes?
2. Is the 10 Day Notice valid?
3. If so, have the Tenants met the burden of proof that they paid their rent in full in accordance with the *Act*?

Background and Evidence

The Landlord testified they did not receive the Tenants' Notice of Dispute Resolution until February 23, 2011 and although they were able to serve the Tenants personally with their evidence on February 25, 2011 they were not able to serve the *Residential Tenancy Branch* five clear days before the hearing. I acknowledged that I had received their evidence via fax this morning. The Tenants confirmed receipt of the Landlord's evidence therefore I accept the Landlord's evidence and will consider it in making my decision.

The parties entered into a fixed term tenancy agreement effective August 1, 2010 which was set to switch to a month to month tenancy after July 31, 2011. Rent is payable on the first of each month in the amount of \$950.00 and the Tenants paid \$475.00 on July 21, 2010 as the security deposit.

The Landlord testified that on February 9, 2011, when February rent had still not been paid a 10 Day Notice to End tenancy was served to the Tenants. Agent (1) testified the 10 Day Notice was taped to the Tenants' door on February 9, 2011, at 5:12 p.m. When she returned to their unit on February 9, 2011 at 6:00 p.m. the Notice was no longer taped to the door and the Tenants would not answer their door.

The Landlord confirmed February and March 2011 rent remains outstanding so they are requesting that I enforce the Notice, end the tenancy immediately, and grant them an Order of Possession.

The male Tenant confirmed he removed the 10 Day Notice from his door on February 9, 2011. He stated that he took a cab to the Landlord's office on February 7, 2011 and paid his rent but he forgot to get a receipt. After receiving the 10 Day Notice he went back to the building to see if they had cameras to prove he was there, but they did not. He confirmed the cab driver did not come into the building with him so he did not witness him paying the rent, but he did tell the cab driver that he was going there to pay his rent. He said the Landlord knows they always pay their rent late and they always pay the \$20.00 late payment fee, this is why he has not paid the March 2011 rent as of yet. He intends to pay his March rent after he gets paid, tomorrow, Friday March 4, 2011.

I asked why they waited so long to make their application to cancel the Notice. The female Tenant stated that she attempted to make the application on line but the program told her it was past the date when she could make the application so she had to wait until she could afford to get transportation into the *Residential Tenancy Branch*.

Analysis

The evidence supports the Tenants received the 10 Day Notice on February 9, 2011 and did not file their application for dispute resolution until February 17, 2011. Therefore, the Tenants failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

As per the aforementioned, I hereby dismiss the Tenants' application to cancel the 10 Day Notice, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective two days upon service to the Tenants. This Order must be served to the Tenants and may be filed in Supreme Court and enforced as an Order of that Court.

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 03, 2011.

Residential Tenancy Branch