



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN SPRUCE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes *OPR, MNR, CNR, RP, FF.*

Introduction

This hearing was scheduled to deal with an application made by the tenant on July 9, 2014, pursuant to the *Residential Tenancy Act*. The tenant seeks to cancel a Ten Day Notice to End Tenancy for Unpaid Rent dated July 4, 2014. The tenant also seeks an Order to force the landlord to complete repairs to the unit.

The hearing is also to deal with a cross application made by the landlord on July 18, 2014, seeking an Order of Possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent dated July 4, 2014.

Both parties were present at the hearing. I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I determined that the issue of the Notice to End Tenancy takes precedence over the other issues contained in the landlord's and tenant's applications, and determined that I will only evidence on that issue.

I will address the remaining issues in both applications in the conclusion of my decision.

Issue to be decided: Landlord's Application

- Is the landlord entitled to an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order cancelling the Notice to End Tenancy for Unpaid Rent?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in May 2011. The current rent is \$1,635.00 per month payable on the 1st day of each month and a security deposit of \$800.00 was paid.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent is in evidence showing that on July 4, 2014, the tenant is was arrears in the amount of \$1,635.00 rent for July 2014.

The landlord testified that they served the Ten Day Notice to End Tenancy for Unpaid Rent on July 4, 2014 by posting it on the tenant's door. The landlord testified that on August 1, 2014, the tenant gave the landlord a \$1,650.00 cheque for the rent for July, 2014, and a \$1,650.00 cheque for the month of August 2014. The landlord testified that the cheque for July was not completed in full and was rejected by the bank. According to the landlord, neither of these cheques were deposited. The landlord pointed out that the landlord did not wish to reinstate the tenancy.

The tenant acknowledged that he had intentionally withheld rent for the month of July 2014, "*to get the landlord's attention*", in relation to repairs that the tenant contends had been neglected by the landlord.

The tenant testified that, once he was served with the Ten Day Notice to End Tenancy for Unpaid Rent on July 4, 2014, he did intend to pay the arrears within the 5-day deadline to cancel the Notice. However, according to the tenant, the landlord was unavailable for the tenant to make the payment of the overdue rent. The tenant testified that the other property managers also could not be located for him to make the payment.

The tenant pointed out that, although the complex has a drop box for rent payments, the tenant did not want to merely deposit the cheque for the July rent arrears into the drop box due to the importance of ensuring that the payment was received by the landlord.

The landlord argued that the tenant could have paid the rent in the usual manner because the manager is on site daily and the drop box is checked and emptied regularly.

The tenant stated that, after contacting the Residential Tenancy Branch for guidance, he then gave the landlord the two cheques on August 1, 2014. The tenant stated that

one cheque was payment in full for rent for July 2014 and the other cheque was for August 2014.

The tenant's position is that, based on the above and the information he received when he contacted Residential Tenancy Branch, the Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that there is no dispute about the fact that the tenant owed arrears for rent in July 2014, properly due on July 1, 2014. I find that, after allowing 3 additional days beyond July 4, 2014, for the service of the Notice, the tenant was required to pay the arrears in full by July 13th, 2014. I find that it has been proven by the landlord, supported by the tenant's testimony, that the tenant failed to pay the outstanding rent within 5 days of receiving the Notice.

Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid and the Notice was therefore still in effect.

While I accept the tenant's testimony that the tenant intended to pay the arrears within the 5 days, I find as a fact that the arrears were not paid in time to cancel the Notice and the only record of an attempted payment occurred on August 1, 2014.

Based on the evidence, I find that the Notice for unpaid rent is supported under the Act and the criteria for ending the tenancy under section 46 of the Act has been met.

Therefore I find that the Ten-Day Notice cannot be cancelled. I conclude that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

I find that the portion of the tenant's application seeking an order against the landlord for repairs has been rendered moot as the tenancy is ending based on the Ten Day Notice to End Tenancy for Unpaid Rent.

In regard to the rental arrears being claimed by the landlord, I hereby sever the monetary claim portion of the landlord's application and dismiss it with leave. I make no findings with respect to the rental arrears owed by the tenant. .

I hereby issue an Order of Possession in favour of the landlord effective September 30, 2014 at 1:00 p.m. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I order that the landlord is entitled to be reimbursed the cost of their application in the amount of \$50.00 and I hereby order that \$50.00 be retained by the landlord from the tenant's security deposit for this purpose.

The tenant's application to cancel the 10-Day Notice to End Tenancy for Unpaid Rent and the request for an order for repairs, is dismissed in its entirety without leave to reapply.

The portion of the landlord's application containing the monetary claim for rent owed is hereby dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The portion of the landlord's application seeking monetary compensation is dismissed with leave to reapply.

The tenant's application seeking to have the Ten Day Notice to End Tenancy cancelled is dismissed without leave. The portion of the tenant's application requesting an order for repairs is found to be moot and therefore 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: September 11, 2014

Residential Tenancy Branch

