



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, ff, rr

Introduction

The tenants apply for an order to cancel a 10 day Notice to End Tenancy. At the hearing, the landlord applied for an Order of Possession.

Issue(s) to be decided

1. Is the Notice valid to end the tenancy?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The following facts are not in dispute:

- This tenancy began February 1, 2014.
- Monthly rent is payable on the first day of each month, in the sum of \$1,350.00.
- After not receiving rent for January, on January 9, 2015 the landlord served the tenants with a 10 day Notice to End for the unpaid rent of \$1,350.00.
- The tenants received the 10 day Notice on January 9, 2015, and did not pay the rent within 5 days of receipt of the Notice, but filed a dispute of the Notice on January 14, 2015.
- No rent for February has been paid.

The following facts are in dispute:

- The tenants allege they paid the rent for January in cash to the landlord on January 16, 2015, and were not provided with a receipt. The female tenant testified that rent was not paid earlier, because there was confusion over whether the tenancy would be ending or not.
- The landlord alleges no rent was ever paid for January.

Analysis

Section 46(5) provides that when tenants do not pay arrears within 5 days of receipt of a 10 day Notice to End Tenancy, (given for non-payment of rent or utilities), or do not apply to dispute that notice within 5 days of receipt, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date.

In this case, the tenants in fact filed a dispute of the 10 day Notice within the requisite 5 day

period. The mere filing of a dispute, however, does not automatically mean the tenants' obligation to pay the rent within the 5 day period is extended, or that the landlord's right to an Order of Possession based upon that Notice are extinguished. It is only in cases where the Notice is not valid for some reason that it would be cancelled, or that rights under that Notice are extinguished. In this case, there is no evidence to demonstrate that the notice was invalid for any reason. The tenants acknowledge that the January rent was not paid at the time they received the notice on January 9, 2015, and they acknowledge not paying the rent until January 16, 2015, a date that lies after the required 5 day period. Even if they did in fact pay the rent on January 16, there is no evidence that the landlord accepted any such rent as a reinstatement of the tenancy. On the contrary the landlord throughout has disputed the tenant's claim, and has requested that the tenancy end based upon the Notice.

I am not asked to determine at this hearing whether rent for January was indeed paid or not. Rather, I am asked by the tenants to determine whether there are grounds to order that the notice be cancelled, and alternatively am asked by the landlord to issue an Order of Possession if the notice is found valid. Accordingly I need not make any finding of fact as to whether or not the rent was ever paid for January. I also note that this hearing is occurring on February 3, 2015, and therefore even if the rent was paid, any use and occupation period based upon such payment would have ended on January 31, 2015. Importantly, no rent was been paid by the tenants for February, as any such payment accepted after the date of the end of the tenancy, (as set out in the Notice) would certainly have reinstated the tenancy, unless specifically accepted on a use and occupation basis.

I do find as fact that the 10 day Notice was validly given, that the January rent was not paid within the required 5 day period, and that the tenants have not proven any basis upon which to cancel the 10 day Notice. Alleged confusion about a tenancy process is not a valid reason to avoid paying rent as and when required under the terms of the tenancy agreement. Accordingly, the tenants' claim to cancel the notice is dismissed, and the landlord is found entitled to an Order of Possession.

An Order of Possession is granted to the landlord, effective 72 hours following service of same upon the tenants.

Conclusion

The tenant's application is dismissed. The landlord is granted an Order of Possession, effective 72 hours following service of same upon the tenants.

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: February 03, 2015

Residential Tenancy Branch

