



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAY STREET PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Preliminary Issues

Each party submitted a copy of the tenancy agreement and the 10 Day Notice(s) to end tenancy which clearly indicated the landlord was a corporate limited company. The person named on the Tenant's application as respondent was an Agent of the limited company conducting Landlord's business. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on July 5, 2016. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent. On July 13, 2016 the Tenant filed an amended application indicating he was served a second 10 Day Notice and had to take time away from work. On July 25, 2016 the Tenant filed a second amended application indicating he was served an amended notice to end tenancy.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person confirmed receipt of the evidence served by the other. Each affirmed that they served the Residential Tenancy Branch (RTB) with copies of the same documents that they had served each other. No issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Has the Tenant provided sufficient evidence to cancel either the 10 Day Notice issued July 2, 2016 or the 10 Day Notice issued July 11, 2016?
- 2) If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which began on May 1, 2016 and was not scheduled to end until April 30, 2017. The Tenant began occupying the rental unit on April 27, 2016. The tenancy agreement indicates the Tenant was required to pay \$800.00 plus \$10.00 for parking on or before the first of each month. On April 22, 2016 the Tenant paid \$400.00 as the security deposit. On April 26, 2016 both parties were represented and completed the move in condition inspection report form.

Sometime near the end of May 2016 the parties mutually agreed the Tenant was not required to pay the \$10.00 per month for parking as he did not have a car. Effective June 1, 2016 the Tenant was required to pay the \$800.00 rent on or before the first of each month for rent.

The undisputed evidence was the Tenant has not paid the \$800.00 rent that was due August 1, 2016; he did not pay the \$800.00 rent that was due July 1, 2016; and he did not pay the balance owed of \$400.00 that was due on June 1, 2016.

The Tenant was personally served two 10 Day Notices to end tenancy as follows: (1) on July 2, 2016 the Notice listing \$1,250.00 as unpaid rent (\$400.00 June 2016 rent + \$800.00 July 2016 rent plus \$50.00 late payment fees for June and July 2016); and (2) on July 11, 2016 the second Notice listing \$1,200.00 in unpaid rent (\$400.00 June 2016 rent + \$800.00 July 2016 rent) as the Landlord learned late payment fees were not unpaid rent.

The Tenant testified he did not pay his rent because he was of the opinion that the Landlord was not legally allowed to charge him a \$25.00 late payment fee.

The Landlord testified that section 10 of the tenancy agreement titled "Arrears" provided the Landlord the authority to charge a \$25.00 late payment fee when rent was paid late.

In closing the Tenant requested the Landlord be granted a 5 day Order of Possession as he wanted to pay his rent. Upon further clarification, the Tenant confirmed he did not have \$2,000.00 to pay the outstanding rent. The Landlord then requested an immediate order of possession.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord. In this case rent was payable on the first of each month in the amount of \$800.00.

Upon review of the 10 Day Notices to End Tenancy, I find the Landlord issued older versions of the 10 Day Notice. That being said, the versions used included all of the required form and content and correct sections of the *Act*. Therefore, I find the form and pre-printed content of the Notices complied with section 52 the *Act*. I caution the Landlord to use updated Notices to end tenancy in the future to avoid any possibility of inaccurate information on the Notice being used.

The amount of unpaid rent listed on the July 2, 2016, 10 Day Notice was incorrect as it included late payment fees provided for by the tenancy agreement. Accordingly, the Landlord withdrew that 10 Day Notice and issued a second notice. Therefore, the July 2, 2016 10 Day Notice is no longer of any force or effect.

On July 11, 2016 the Landlord issued and served a second 10 Day Notice with the correct amount of unpaid rent. Upon consideration of the undisputed evidence that rent had not been paid in accordance with section 26 of the *Act*, I find the Landlord had valid reasons for issuing the 10 Day Notice dated July 11, 2016. Accordingly I dismiss the Tenants' application, without leave to reapply.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the July 11, 2016 met the form and content requirements of section 52 of the *Act*, and having dismissed the Tenant's application, I hereby issue the Landlord an Order of Possession effective 2 Days upon service, pursuant to section 55(1) of the *Act*.

Conclusion

The Tenant's application was dismissed, without leave to reapply and the Landlord was granted an Order of Possession. The Landlord was cautioned to use updated Notices to end tenancy in the future to avoid any possibility of inaccurate information on the Notice.

This decision is final, legally binding, and 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: August 23, 2016

Residential Tenancy Branch