



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 10, 2016 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46; and
- other unspecified relief.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he received the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that he served the tenant with his written evidence package on July 26, 2016, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his written evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence on July 31, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on June 10, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 15, 2016, five days after its registered mailing. The tenant filed this application to dispute the landlord's 10 Day Notice.

I asked the landlord to provide a copy of the 10 Day Notice to me after the hearing, via facsimile, as I had not received a copy from either party prior to the hearing. The landlord agreed to provide the notice to me by August 9, 2016 after the hearing, and I provided the landlord with the fax number and the relevant file information during the hearing. An information officer from the Residential Tenancy Branch also telephoned the landlord after the hearing in order to remind him to submit the notice and provided him with two fax numbers to submit the notice. As of the date of this decision, August 24, 2016, I still have not received the 10 Day Notice from the landlord.

Preliminary Issue – Dismissal of Tenant’s Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of the tenant’s participation in this hearing, I order the tenant’s entire application dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2016. Monthly rent in the amount of \$2,150.00 is payable on the first day of each month. No security deposit was paid by the tenant. Both parties signed a written tenancy agreement but neither party provided a copy for this hearing. The landlord entered the rental unit on the night before this hearing with the police because the police were confiscating stolen property from the rental unit. The tenant left the rental unit when the police came. The landlord does not know if the tenant will return to the rental unit and her belongings are still at the rental unit.

The landlord explained that he issued the 10 Day Notice for unpaid rent of \$3,150.00 due on June 1, 2016. The landlord indicated that the notice states an effective move-out date of June 20, 2016. The landlord said that the tenant failed to pay \$2,150.00 for June 2016 rent, as well as an additional \$1,000.00 for rent prior to that time. The

landlord stated that the tenant also failed to pay rent of \$2,150.00 for each month from July to August 2016.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* on June 27, 2016, outside of the five day time period and made an application under section 66 for more time to make an application to cancel the 10 Day Notice. However, the tenant did not appear at this hearing to present submissions and I dismissed her application as noted above.

Section 55(1) of the *Act* states the following:

55 (1) 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]...

I find that the landlord is not entitled to an Order of Possession under section 55(1)(a) of the *Act* because I do not have a copy of the 10 Day Notice in order to determine whether it complies with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply. The landlord is not entitled to an order of possession.

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: August 24, 2016

