



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 30 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 confirmed that he is the agent for the main landlord owner for this rental unit and that he had authority to represent him at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on August 16, 2016 by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on August 21, 2016, five days after its registered mailing.

The landlord indicated that the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 9, 2016 ("10 Day Notice"), on the same date. In accordance with section 88 of the *Act*, I find that the tenant was served with the 10 Day Notice on July 9, 2016.

Issue to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2008, but the tenant was living there before that date, although he does not know the exact date. The landlord stated that monthly rent in the current amount of \$1,000.00 is payable on the first day of each month. The landlord said that the tenant signed a new written tenancy agreement on July 25,

2008 at a rent of \$950.00 per month. He did not provide a copy of this tenancy agreement with his Application. The landlord said that the rent was increased by \$50.00 each month on May 1, 2015, pursuant to a legal Notice of Rent Increase, dated January 23, 2015 ("NRI"). He stated that the notice was personally served on the tenant on January 23, 2015. He did not provide a copy of this NRI with his Application. When questioned as to why the rent increase was above the allowable *Residential Tenancy Regulation* ("*Regulation*") amount of 2.5% for 2015, the landlord said that it included utilities. Yet, the landlord claimed that no other amounts besides rent were included on the NRI form.

The notice states that rent in the amount of \$2,300.00 was due on July 1, 2016. The landlord could not provide a breakdown of the above amount. Initially he said that rent was outstanding since May 2016, then claimed that it was outstanding since April. The landlord could not provide the amounts of the outstanding rent, stating that payments were made in June and August but then changing his testimony to say that he was not sure. The landlord seeks an order of possession based on the 10 day Notice.

Analysis

The landlord submitted a photograph, rather than a photocopy, of page 1 of the 10 Day Notice, contrary to Rule 3.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, where printable documents are not to be submitted as digital evidence. The landlord did not include a complete copy of the notice, as page 2 was missing, which is required by Rule 2.5 of the RTB *Rules of Procedure*.

Section 46(1) permits a landlord to end a tenancy by giving a 10 Day Notice if rent is unpaid on any day after it is due. The landlord issued a 10 Day Notice on July 1, 2016. The landlord was unable to justify the \$2,300.00 in rent indicated on the notice. The landlord provided changing testimony during the hearing.

The landlord did not provide a copy of the written tenancy agreement indicating that rent of \$950.00 is payable each month. The landlord also stated that an NRI was served on the tenant, but did not provide a copy of this notice, to indicate the rent increase amount. The tenancy agreement and NRI should have been available to the landlord at the time of this hearing and should have been submitted prior to this hearing. Oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided.

Based on the testimony of the landlord, the rent increase amount was illegal at \$50.00 which is more than the 2.5% allowable *Regulation* amount. Based on rent of \$950.00 due each month, a maximum of \$23.75 could be charged for a rent increase in May 2015. The landlord stated that the rent was only increased once during the tenancy from August 1, 2008 to May 1, 2015.

On a balance of probabilities, I find that the landlord's evidence was insufficient to demonstrate the amount of rent potentially owed by the tenant for this tenancy. Accordingly, I find that the tenant did not have proper notice of the amount of rent due on the 10 Day Notice, in order to take corrective action under section 46(4) of the *Act*, to either pay any outstanding rent or make an application for dispute resolution.

Therefore, the landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, dated July 1, 2016, is dismissed without leave to reapply. The landlord's 10 Day Notice, dated July 1, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The landlord's application for an order of possession for unpaid rent based on the landlord's 10 Day Notice, dated July 9, 2016, is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated July 9, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord is at liberty to make another application for an order of possession for unpaid rent upon issuing another 10 Day Notice that is valid and upon proving the legal amount of rent due for this tenancy.

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: October 11, 2016

Residential Tenancy Branch