



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The landlord appeared at the hearing but the tenant did not, despite leaving the teleconference call open for more than 30 minutes.

The landlord confirmed that he was served with the tenant's application and was prepared to respond to it. Since the tenant failed to appear and the landlord appeared was prepared to respond to the tenant's application, I dismissed the tenant's application without leave to reapply.

The landlord testified that he served his Application for Dispute Resolution upon the tenant via registered mail sent on November 16, 2016. However, the landlord withdrew his request for a Monetary Order and I grant the landlord leave to reapply for a Monetary Order if he so chooses. Since the landlord withdrew his request for a Monetary Order, the only issue to determine is whether the landlord is entitled to an Order of Possession.

Section 55(1) of the Act provides that if a tenant applies to cancel a Notice to End Tenancy and the tenant's application is dismissed during the hearing, the landlord must be provided an Order of Possession if the Notice to End Tenancy complies with the form and content requirements of section 52 of the Act. Accordingly, I proceed to consider whether the landlord is entitled to an Order of Possession under section 55(1) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession under section 55(1) of the Act?

Background and Evidence

The landlord testified that the tenant is required to pay rent of \$720.00 on the first day of every month pursuant to a tenancy agreement that started October 1, 2016. The landlord testified that the tenant failed to pay rent that was due on November 1, 2016. The landlord testified that he left a 10 Day Notice to End Tenancy for Unpaid Rent in the rental unit on November 2, 2016 after he entered the unit pursuant to a Notice to Enter given on November 1, 2016.

The tenant filed an Application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and provided a copy of both pages of the 10 Day Notice she seeks to have cancelled. The 10 Day Notice is signed and dated by the landlord on November 2, 2016; indicates the name of the tenant and landlord; the address of the rental unit and the landlord's service address; indicates the tenant failed to pay rent of \$720.00 on November 1, 2016 and has a stated effective date of November 15, 2016. In filing her Application on November 10, 2016 the tenant indicated that she received the 10 Day Notice on November 8, 2016.

The landlord confirmed that the tenant still resides in the rental unit and the tenant did not pay the outstanding rent for November 2016 and did not pay any rent for the month of December 2016.

Analysis

Under section 26 of the act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent under the Act.

I accept the unopposed evidence before me that the tenant failed to pay rent of \$720.00 that was due on November 1, 2016 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2016. Although the landlord may not have served the 10 Day Notice in accordance with one of the permissible methods of service provided under section 88 of the Act, the tenant filed to dispute the 10 Day Notice on November 10, 2016 indicating she received it on November 8, 2016. Since the tenant acknowledged receipt of the 10 Day Notice on November 8, 2016 I deem the tenant sufficiently served with the 10 Day Notice as of November 8, 2016 pursuant to the authority afforded me under section 71(2) of the Act. Accordingly, I find that the tenant until November 13, 2016 to either pay the outstanding rent or dispute the 10 Day Notice. The tenant filed to dispute the 10 Day Notice; however, as provided earlier in this decision I dismissed her application.

Upon review of the 10 Day Notice that was provided as evidence by the tenant, I am satisfied that it meets the form and content requirement of section 52 of the Act. Having dismissed the tenant's application to cancel the 10 Day Notice, I find the landlord entitled to receive an Order of Possession under section 55(1) of the Act, with provides:

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*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice

[Reproduced as written]

With this decision, I provide the landlord with an Order of Possession that is effective two (2) days after service upon the tenant.

Conclusion

The tenant's applicant to cancel the 10 Day Notice was dismissed and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant pursuant to section 55(1) of the Act.

The landlord's monetary claim against the tenant was dismissed with leave to reapply.

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: December 14, 2016

Residential Tenancy Branch