



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

CNR, RP, RR, OLC

Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on July 3, 2016, an order the landlord comply with the Act, an order that repairs be made and rent reduction for repairs.

A hearing was held on September 28, 2016; neither party attended. On September 29, 2016 a decision was issued dismissing the application with leave to reapply.

On October 17, 2016 the landlord applied requesting review consideration. A review consideration decision issued on October 26, 2016 granted the landlord this new hearing. This new hearing will consider only the 10 day Notice; the balance of the tenants' application remains dismissed with leave to reapply

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The previous decisions were reviewed. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony. I have considered all of the evidence and testimony provided.

Preliminary Matters

Neither party submitted a copy of the 10 day Notice to end tenancy for unpaid rent that is in dispute. The landlord had a copy of the Notice and the tenant confirmed the details of that Notice, as provided by the landlord.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on July 3, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced on July 1, 2015. Rent is \$900.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of \$450.00. The parties signed a tenancy agreement; a copy was not supplied as evidence.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities on July 3, 2016. The Notice had an effective date of July 13, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,270.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant did not dispute the Notice until August 4, 2016. The tenant had paid \$300.00 of the rent owed by way of two payments (July 9, \$100.00; July 11, \$200.00.)

The tenant said that after the tenant applied for dispute resolution the landlord agreed to allow the tenant to pay the rent. The landlord said he wanted the rent paid. The tenant confirmed that the landlord is currently owed \$1,970.00 rent.

Analysis

I find that the tenant received the 10 day Notice to end tenancy on July 3, 2016; the date confirmed by the tenant.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 3, 2016, I find that the earliest effective date of the Notice is July 13, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on July 13, 2016, pursuant to section 88 of the Act.

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights. The tenant did not dispute the Notice until a month has passed.

The tenant has confirmed that only \$300.00 was paid in July, 2016.

As I have determined that the tenant has failed to pay all the rent owed within five days of July 3, 2016, I find that the 10 day Notice to end tenancy for unpaid rent issued on July 3, 2016 is of full force and effect and that the tenant's application is dismissed. There was no evidence before me that the landlord reinstated the tenancy. The landlord applied for review consideration and served the tenant with notice of this hearing; providing an indication that the landlord wished to end the tenancy.

Section 46(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; July 13, 2016. The tenant has been over-holding in the unit since that time.

Section 55(1) of the Act 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.

Therefore, as the tenants' application is dismissed I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

As a result I find, pursuant to section 82(3) of the Act that the decision issued on September 29, 2016 is varied. The tenant continues to have leave to reapply on the balance of the application made on August 4, 2016.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to an order of possession.

The decision issued on September 29, 2016 is varied.

This decision is final and 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: December 15, 2016

Residential Tenancy Branch