



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 888 FAIRVIEW LTD GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities and to cancel a One Month Notice to End Tenancy for cause.

The tenants and an agent for the landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord's agent advised that the other party named on this application is the caretaker of the property and not the landlord or a property manager. This person's name should therefore not be included on the tenants' application or any Orders.

Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent?

- Are the tenants entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2015. Rent for this unit is \$700.00 per month due on the 1st of each month. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant failed to pay the rent on December 01, 2016 leaving an unpaid balance of \$700.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice) on December 02, 2016. This was posted on the tenants' door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 15, 2016. The tenants did not pay the outstanding rent within the five allowable days but did file an application to dispute the 10 Day Notice within the five allowable days. The tenants later paid the rent for December on December 13, 2016. Since that time the tenants have also failed to pay rent for January, 2017.

The landlord requested at the hearing that I uphold the 10 Day Notice and issue an Order of Possession to the landlord. The landlord agreed to extend the effective date of the Order of Possession to January 31, 2017 to give the tenants time to find alternative accommodation.

The tenants testified that they misunderstood what they were required to do with regard to the payment of December's rent and agreed this was not paid within the five allowable days after receiving the Notice on their door. The tenants testified that they thought they had 10 days to pay the rent because they had filed an application to

dispute the 10 Day Notice. The tenants agreed that they have not paid rent for January, 2017.

The tenants testified that they do not have an Order from an Arbitrator to withhold any rent and although they have not had any heating in the unit they have not paid any costs for emergency repairs.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that a valid 10 Day Notice was served upon the tenants on December 02, 2016 pursuant to section 88 of the *Residential Tenancy Act*. As this Notice was posted to the tenants' door it was deemed to have been served three days later pursuant to s. 90(c) of the *Residential Tenancy Act (Act)*.

The Notice states that the tenants may dispute the Notice within five days for specific reasons such as they have proof that the rent was paid; they have an Order from an Arbitrator giving them permission to keep all or part of the rent or they held part of the rent with prior notice to the landlord, for the cost of emergency repairs.

The tenants agreed at the hearing that they have not paid the rent, they do not have an Order from an Arbitrator to withhold any rent and they have not withheld rent for the cost of emergency repairs.

I refer the parties to s. 46(4) of the *Act* which states:

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Based on the foregoing, I find the rent was not paid within the five allowable days after being deemed to have received the 10 Day Notice and therefore I find the 10 Day Notice remains in force and effect. Consequently, I dismiss the tenant's application for an Order to cancel the 10 Day Notice.

Further to this I refer the parties to s. 55(1) of the *Act* which states:

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.

I find the 10 Day Notice does comply with s. 52 of the *Act* and as I have dismissed the tenant's application to cancel the 10 Day Notice, I issue the landlord an Order of Possession effective as requested on January 31, 2017 pursuant to s. 55 of the *Act*.

As this tenancy will end in accordance with the 10 Day Notice I am not required to deal with the issue of the One Month Notice.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective on **January 31, 2017**. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: January 16, 2017

Residential Tenancy Branch