



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BARAFIELD REALTY LTD. c/o GATEWAY PROPERTY MGMT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 16, 2016. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlords who provided affirmed testimony. No one appeared on behalf of the Tenant, despite this hearing being convened to hear the Tenant's application.

Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy issued April 20, 2015 be upheld or cancelled?
2. If upheld, did the Landlord appear and request an Order of Possession?

Background and Evidence

The Landlords submitted documentary evidence which indicated the parties entered into a fixed term written tenancy agreement that began on April 1, 2014 and switched to a month to month tenancy after March 31, 2015. Rent as per the tenancy agreement was payable on the first of each month in the amount of \$755.00. Subsequent rent increases have been issued to the Tenant and the current monthly rent of \$785.00 became effective April 1, 2016. On March 18, 2014 the Tenant paid \$377.50 as the security deposit.

I heard the Landlords state that when the Tenant failed to pay the December 1, 2016 \$785.00 rent and \$95.00 arrears they posted a 10 Day Notice to the Tenant's door on December 12, 2016. That Notice listed an outstanding amount of \$880.00 that was due on December 1, 2016 and an effective date of December 25, 2016. The Landlords testified the Tenant is still occupying the rental unit and he has not paid the outstanding rent. The Landlord requested an Order of Possession.

The hearing continued for 10 minutes, during which time no one signed into the teleconference on behalf of the Tenant.

Analysis

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find as follows:

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the *Act*.

Upon review of the 10 Day Notice to End Tenancy, I accept the undisputed evidence that the Notice was issued and served upon the Tenant in a manner that complies with the *Act*. I further accept that rent has not been paid in accordance with section 26 of the *Act*. Therefore, I find the Landlord had valid reasons for issuing the 10 Day Notice dated December 12, 2016. I order that the 10 Day Notice is upheld and I conclude that this tenancy ended on the effective date of the Notice, December 25, 2016. Accordingly, I dismiss the Tenant's application, without leave to reapply.

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, section 55(1) of the *Act* stipulates that the director must grant the landlord an order of possession if the landlord's notice to end tenancy complies with section 52 of the *Act* [*form and content of notice to end tenancy*], and the tenant's application is dismissed or the landlord's notice is upheld.

As per the foregoing, the Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court. The Landlords are at liberty to file their own application if they wish to seek an order for any losses they may have incurred as a result of this tenancy.

Conclusion

The Tenant's application was dismissed, without leave to reapply, and the Landlord was issued an Order of Possession. This decision is final, legally 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: January 18, 2017

Residential Tenancy Branch

