



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes: OPR, DRI

Introduction

This hearing dealt with the tenant's application for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 8, 2017 (the "10 Day Notice"). The tenant also applied to dispute an additional rent increase and to recover the application filing fee.

The landlord and his agent attended the hearing. The landlord confirmed receipt of the tenant's application, notice of hearing, and supporting materials. Both landlord and agent gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions.

The tenant did not attend the hearing for his own application.

At the outset of the hearing the landlord advised that the application had not included the last names of either landlord. Accordingly, I have amended the style of cause to include the landlords' last names.

Issues

Is the tenant entitled to an order cancelling the 10 Day Notice?

Should the tenant's application to dispute an additional rent increase succeed?

Should the tenant be granted return of the application filing fee?

Background and Evidence

The 10 Day Notice is dated January 8, 2017 and has an effective date of January 18, 2017. It claims outstanding rent of \$3,500.00. The landlord testified the 10 Day Notice was served on the tenant by posting and the tenant's application acknowledges receipt on January 9, 2017.

The landlord submitted a copy of the tenancy agreement and a letter from the tenant signed November 28, 2016 that appears to acknowledge that the tenant owes the landlord \$2,650.00. The landlord did not serve his evidence on the tenant. The landlord was advised at the hearing that all evidence upon which a party wishes to rely must also be served on the other party in advance of the hearing.

The landlord's agent testified that the tenant has fallen into arrears over the years but has recently not been making up missed or partial rental payments, such that there is a significant amount now owing. He further submitted that the tenant has not paid the arrears in full since receipt of the 10 Day Notice and that rent for January and February are outstanding. The tenant lives below the landlord but has not been responsive to them and has not opened the door when they've knocked.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under s.46(4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The 10 Day Notice was received on January 9, 2017. The tenant has not paid the amount owing in full. Although the tenant applied to dispute the 10 Day Notice on January 13, 2017, and is therefore within the 5 day timeline permitted by s. 46, the tenant did not attend at the hearing and the landlord gave undisputed evidence that there are arrears outstanding.

As the tenant has not attended the hearing, he has not provided any basis for cancelling the 10 Day Notice. Therefore I order that the tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply. The balance of the tenant's application is also dismissed without leave to reapply.

Section 55 of the Act provides that if a tenant's application to dispute a notice to end tenancy is dismissed, the landlord must be granted an order of possession if the notice

complies with s. 52 of the Act. I have reviewed the 10 Day Notice and find that it complies with s. 52. In particular, I find that it has been signed by the landlord as required by s. 52(a), although in the space meant for the landlord's printed name. Accordingly, the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

The landlord is granted an order of possession effective two (2) days from the date of service.

The landlord has been advised that he must make his own application to the Residential Tenancy Branch in order to obtain a monetary order for unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding unless otherwise indicated in the Act.

Dated: February 10, 2017

Residential Tenancy Branch