



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with the tenants' application pursuant to section 46 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice").

Tenant LG (the "tenant") and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant LG testified that tenant DH would be participating in the hearing, however by the conclusion of the hearing some 25 minutes later, tenant DH had not called in. The landlord confirmed she was an agent of the landlord named in this application, and had authority to speak on her behalf. The tenant did not confirm that she had authority to represent tenant DH as an agent at this hearing

The landlord confirmed receipt of the tenants' application for dispute resolution package and the tenant confirmed receipt of the landlord's evidence package. The tenant confirmed that she did not provide any documentary evidence for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and that the tenants were duly served with the landlord's evidence package.

Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant requested an adjournment. The tenant testified that her son had been diagnosed with a serious illness and has surgery scheduled in two days, therefore she requests the matter adjourned. The landlord did not consent to the adjournment.

Although the circumstances described by the tenant are unfortunate, the son's illness did not require the tenant's attendance during the hearing and for this reason I advised the parties the adjournment was not granted.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 4, 2016 on a fixed term until October 31, 2017. Rent in the amount of \$2,600.00 is payable on the first of each month. At the start of tenancy the tenants forwarded post-dated cheques for the first of each month in the amount of \$2,600.00 to the landlord. The tenants remitted a security deposit in the amount of \$1,300.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The parties agree that November, December and January cheques were returned insufficient funds and as a result the tenants paid November rent with a new cheque and December and January rent with e-transfer installments.

The tenant confirmed receipt of the 10 Day Notice, dated February 2, 2017, posted to the rental unit door. This 10 Day Notice indicates rent in the amount of \$2,600.00 due February 1, 2017 remains outstanding and states an effective move-out date of February 12, 2017.

Landlord

It is the landlord's position that on an undisclosed date, the parties agreed that the tenants would close their bank account, the landlord would not deposit the cheques for rent, and instead the tenants would pay by way of e-transfer. The landlord contends that she did not receive an e-transfer for February rent, despite reminders to the tenants for such. In an effort to substantiate her position, the landlord provided copies of text messages, emails and bank statements.

The landlord acknowledged that after the 10 Day Notice was issued, the landlord requested six months of prepaid rent to continue the tenancy, however at no time did the tenants attempt to pay rent or the landlord deny rent payment from the tenants.

Tenants

The tenant did not dispute that the parties agreed rent would be paid by way of e-transfer. The tenant testified that they were going to send an e-transfer for rent but the landlord advised them she would not accept it unless it was six months pre-paid rent.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The tenants filed their application within five days but at no time did the tenant argue that February rent had been paid in full; instead she argued the tenants were "going to" send an e-

transfer. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Despite the landlord requesting six months prepaid rent, the tenants were obligated to pay February rent and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. Accordingly I dismiss the tenants' application to cancel the 10 Day Notice and find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

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: March 01, 2017

Residential Tenancy Branch