



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LRE, OLC, PSF, FF

Introduction

This hearing dealt with the tenants' application pursuant to 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") pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant KS and the landlord attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant MS did not attend the hearing, however tenant KS testified he is the brother of tenant MS and confirmed he had authority to speak on tenant MS's behalf.

The landlord confirmed receipt of the tenants' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application. The parties confirmed that neither provided documentary evidence for this hearing.

Preliminary Issue – 10 Day Notice

At the outset of the hearing I advised the parties that because the file did not contain a copy of the 10 Day Notice I required a copy to be faxed to the Residential Tenancy

Branch. The parties complied and provided two 10 Day Notices, one addressed to tenant KS and the other addressed to tenant MS.

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 testimony of the parties, the landlord rents three bedrooms located in the lower level of a two level house, to three separate tenants. One bedroom is occupied by tenant KS, a second bedroom is occupied by tenant MS and the third bedroom is occupied by an unnamed party.

The parties testified that each tenant has their own verbal tenancy agreement with the landlord. The parties agreed that both tenant KS and tenant MS began their separate tenancies on May 22, 2016. Tenant KS has a monthly rent of \$550.00 whereas tenant MS has a monthly rent of \$590.00, both payable on the first of each month. Each tenant remitted a security deposit at the start of tenancy, which the landlord still retains. Tenant KS and tenant MS continue to reside in the rental unit.

Tenant KS testified that upon learning the rental units are in contravention of city bylaws he and tenant MS withheld March rent.

Tenant KS and tenant MS were served separate 10 Day Notices on March 4, 2017 for nonpayment of March rent. Both notices state an effective move out date of March 15, 2017.

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 tenant KS argue that March rent had been paid in full; instead he argued the tenants withheld rent on the basis the units were illegal. 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. Regardless of the legality of the unit, the tenants were obligated to pay March 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 each served with an effective notice. Accordingly I dismiss the tenants' application to cancel their respective 10 Day Notice's and find that the landlord is entitled to two orders of possession, pursuant to section 55 of the *Act*.

As the tenancy is set to end, the remainder of the tenants' application is dismissed without leave to reapply.

Conclusion

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

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

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: April 10, 2017

Residential Tenancy Branch