



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, PSF, FF

Introduction

On March 7, 2017, the Tenants made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2017. The Tenants also requested a a repair order and for the Landlord to provide services or facilities required by law.

The matter was set for a conference call hearing. Both parties attended the teleconference hearing. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Rules of Procedure permit an Arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. As the primary issue to decide is whether or not the tenancy has ended, I have dismissed the Tenants' other claims with leave to reapply.

The Tenants testified that they submitted documentary evidence of photographs; however, there are no documents from the Tenants within the file. The Residential Tenancy Branch case management system contains no record that the Tenants submitted any photographs.

Then hearing proceeded with respect to the 10 Day Notice to End Tenancy issued by the Landlord.

The Landlord corrected the spelling of his first name in the Application. I have amended the Tenants application accordingly.

Issue to be Decided

- Should the 10 Day Notice dated March 2, 2017, be cancelled?

Background and Evidence

The parties testified that the tenancy began on December 1, 2016, as a month to month tenancy. Rent in the amount of \$2,900.00 is to be paid on the first day of each month. The Tenants paid the Landlord a security deposit of \$1,450.00.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement for the months of March 2017, and April 2017.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2017 ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the Notice in person on March 2, 2017.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$2,900.00 which was due on March 1, 2017. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explains the Tenant had five days to dispute the Notice.

The Landlord submitted that the Tenants did not pay for any emergency repairs, and there have not been any hearings that gave the Tenants the authority to withhold payment of the rent.

The Tenants acknowledged that they received the 10 Day Notice and they disputed the Notice on March 7, 2017, within the required timelines.

The Tenants testified that they did not pay the rent that was due within 5 days of receiving the 10 Day Notice. The Tenants testified that they have not paid the rent for March 2017, or April 2017.

The Tenants testified that they did not pay the rent because the Landlord came onto the property and started removing some trees. They also submitted that they asked the Landlord to repair of the balcony.

Analysis

Section 26 of the Act states that a Tenant must pay rent when its 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 the Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants did not pay the rent owing under the tenancy agreement within five days of receiving the 10-Day Notice, and did not have the authority to withhold payment of the rent.

I dismiss the Tenant's application to cancel the 10 Day Notice dated March 2, 2017.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice dated March 2, 2017, complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their application, I decline to order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenants failed to pay the rent when it was due and had no right to withhold payment of the rent.

The Tenants' application to cancel the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective 2 days after service on the Tenants.

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 05, 2017

Residential Tenancy Branch