



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEADWATER PROJECTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) issued on March 31, 2017, and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued on May 9, 2017.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and Procedural matter

In this case, the tenants filed an application to dispute a Two Month Notice, as they submit in their application the notice was not issued in good faith; however, the tenants were willing to accept the Two Month Notice, if the landlord agreed to pay the tenants the sum of \$12,000.00 for compensation and no rent for May 2017. Those terms were not agreed to by the landlord and not in accordance with the compensation under section 51 of the Act.

However, in order for the Two Month Notice to be effective it must be in the proper form, pursuant to section 52 of the Act. I have reviewed the Two Month Notice, I find the Two Month Notice is not completed in accordance with the requirements of the Act, as there is no effective vacancy date stated. Based on this deficiency, I find the Two Month Notice is not valid and has no force or effect. Therefore, I grant the tenants’ application to cancel the Two Month Notice issued on March 31, 2017.

Issue to be Decided

Should the 10 Day Notice be cancelled?

Background and Evidence

The landlord testified that the tenants did not pay rent for March, April, and May 2017, and were in rent arrears of \$2,232.00, when they were served with the 10 Day Notice on May 9, 2017.

The landlord testified that on May 10, 2017, they received from the tenants the amount of \$1,488.00; this included a credit of \$100.00 to recover a filing fee from a previous hearing. The landlord stated that the amount of \$744.00 remains outstanding. The landlord seeks an order of possession pursuant to section 55 of the Act.

The tenants testified that they received the Notice on May 9, 2017. The tenants stated that they were negotiating with the landlord and May 2017, rent would count as compensation for the Two Month Notice. The tenants stated that the landlord did not respond to their demands.

The landlord responded that they were not accepting the tenants' terms for compensation as they were seeking the amount of \$12,000.00 in compensation. The landlord stated the tenants were required to pay the rent as they were disputing the Two Month Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants disputed the Two Month Notice, that notice was not valid as it did not comply with the Act.

Even If I accept the tenants' evidence that they were attempting to negotiate with the landlord to end the tenancy; however, the landlord did not accept the terms presented and the tenants were required to pay rent.

Section 46 of the Act states,

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the 10 Day Notice, I find the 10 Day Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants admitted rent was not paid within 5 days after receiving the Notice.

Further, the tenants did not have the authority under the Act to deduct any portion from the rent. The tenants were not entitled to receive compensation under section 51 of the Act, as they were seeking that the Two Month Notice be cancelled. The tenants on May 10, 2017, which I note is after the date which rent is due, offered to vacate the premises within 48 hours, if the landlord paid them the amount of \$12,000.00, and no rent for May 2017.

A tenant cannot use the Two Month Notice as a form of ransom or extortion to end the tenancy. Should a notice to end tenancy under this part of the Act be valid, which in this case it was defective and not valid. The amount of compensation the tenant is entitled to receive is specified in section 51 of the Act, which is the equivalent to one month of rent payable under the tenancy agreement or in this case \$744.00.

I find the tenants did not pay the full amount of rent owed within five days. Therefore, I dismiss the tenants' application to cancel the 10 Day Notice.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlord.

As the tenant's application is dismissed, I must grant to the landlord an order of possession of the rental unit,

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenants were not successful, I dismiss the tenants request to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the Two Month Notice is granted. The tenants' application to cancel the 10 Day Notice is dismissed. The landlord is granted an order of possession.

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: May 25, 2017

Residential Tenancy Branch