



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I explored service of hearing documents upon each other. I noted that I had not received any documentary evidence from the tenant. I had received a copy of a 10 Day Notice form from the landlord but not the tenant. The tenant had a copy of his 10 Day Notice in front of him and I confirmed some of its content with him including confirmation that he had received both pages. Accordingly, I have considered the 10 Day Notice submitted to me by the landlord. I had also received a written submission from the landlord but I determined that the landlord had not served the written submission upon the tenant and I excluded it from further consideration. I informed the parties were informed that I would hear their respective positions by way of oral testimony provided it was relevant to the matter at hand.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy started several years ago although the exact date was not known by the parties. The monthly rent of \$450.00 is due on the first day of every month and the tenant paid a security deposit of \$225.00.

On March 26, 2017 the landlord posted both pages of a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door. The 10 Day Notice served upon the tenant indicates that rent of \$700.00 was outstanding as of March 1, 2017. The tenant stated that he found the 10 Day Notice a few days later as he had been in the hospital. I was satisfied the tenant filed to dispute the 10 Day Notice within the five day time limit for doing so.

The landlord testified that the outstanding rent has not been paid and no rent has been received for April 2017 or May 2017.

The tenant testified that he paid all of the rent due to the landlord with the exception of May 2017 rent as he is awaiting the outcome of this proceeding. The tenant acknowledged that he owes \$250.00 to the landlord for beer.

Both parties provided consistent testimony that the tenant pays rent in cash and that the landlord has not given the tenant receipts. The tenant stated that he works, although work has been slow lately and he has been ill, and that the cash for the rent payments was withdrawn from his bank account.

The landlord responded by stating he has recorded the tenant's payments on his cell phone and that the tenant had been making partial payments. The landlord began reading off various payment dates and amounts from his phone. The landlord pointed out that the tenant did not provide his bank statements as evidence.

The tenant stated that "everything" has been paid but the tenant did not indicate dates or amounts he made payments, or to whom. The tenant stated that he has given cash payments to the landlord's children and parents as well. The landlord stated that his children are 1 and 11 years old and do not take payments from the tenant.

The tenant submitted that he has been a good tenant and the landlord only issued the 10 Day Notice in retaliation for him banging on the ceiling and because he stopped cutting the grass. The landlord acknowledged the tenant has become disturbing, including banging on the ceiling, but maintained that the 10 Day Notice was issued because the tenant failed to pay rent. Essentially, both the landlord and tenant called each other a liar multiple times.

During the hearing, I orally provided my decision to dismiss the tenant's application and provide the landlord with an Order of Possession. The landlords requested an Order of Possession effective as soon as possible given the many months of unpaid rent and the

tenant's disturbing behaviour. The tenant requested more time to vacate since he has not yet found another place to move to.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Based on the parties' consistent testimony, I find the tenant is required to pay \$450.00 on or before the first day of every month under their terms of tenancy.

Where a tenant does not pay rent that is due, section 46 of the Act provides that the landlord may serve a 10 Day Notice to End Tenancy for Unpaid Rent upon the tenant. Upon receipt of the 10 Day Notice from the landlord and oral confirmation of its content from the tenant, I am satisfied that the tenant was in receipt of both pages of a 10 Day Notice issued in the approved form.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case the tenant filed to dispute the 10 Day Notice. The tenant's basis for cancelling the 10 Day Notice is that rent is not outstanding or it was paid. Accordingly, it is before me to determine whether the tenant paid the rent that was due to the landlord under their tenancy agreement.

It is undisputed that the tenant has made rent payments in cash and that the landlord does not give the tenant receipts for cash payments. As I informed the landlords at the hearing, a landlord is obligated to give a tenant receipts for cash payments whether the tenant requests a receipt or not. Nevertheless, it did appear to me that the landlord did have a system of recording payments received from the tenant by way of his cell phone, as he read from during the hearing.

Where there is a dispute as to whether payment of rent has been made, I find the burden to prove rests with the tenant since it is very difficult to prove something has not been received. Having heard the tenant testify that he obtained cash for his rent payments from his bank account, I find it reasonable that the tenant would have produced his bank statements as evidence to corroborate his position. The tenant did not do so and I am left with disputed verbal testimony. As to the disputed verbal testimony, I found the landlord was able to provide detailed amounts and dates payments were received from the tenant; yet, the did not provide any specific detail such as the dates or amounts he gave payment to the landlord, or the landlord's family members as alleged by the tenant during the hearing. Further, I find the landlord's

submissions with respect to partial payments or non-payment from the tenant to be consistent with the tenant's acknowledgement that he has suffered some loss of work and illness.

In light of the above, I find I prefer the landlord's submissions that the tenant failed to pay rent that was due over the tenant's lack of corroborating evidence or detail. Accordingly, I accept that rent remains outstanding and I uphold the 10 Day Notice. Therefore, I dismiss the tenant's request that I cancel the 10 Day Notice.

Having dismissed the tenant's application, I must consider whether the landlord is entitled to an Order of Possession under section 55 of the Act. Section 55(1) provides:

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.

Upon review of the 10 Day Notice before me and confirmation of its content with the tenant, I am satisfied that the 10 Day Notice served upon the tenant is in the approved form and was duly completed by the landlord. Accordingly, I find the criteria of section 55(1) have been met and I provide the landlords with an Order of Possession.

I considered the parties' respective arguments with respect to the effective date of the Order of Possession. Considering I have accepted the landlord's position that several months of rent have not been paid by the tenant, I find that to delay enforcement of the Order of Possession would unfairly prejudice the landlord by suffering causing him further losses. Therefore, I provide the landlord an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. The landlord is provided an Order of Possession pursuant to section 55(1) of the Act. The Order of Possession is effective two (2) days after service upon 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: May 03, 2017

Residential Tenancy Branch