



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on July 10, 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

It should be noted that the agent for the landlord has changed. Therefore, I found it appropriate to add both previous and current landlord’s agent to the style of cause.

At the end of the hearing the tenant asked for an adjournment; however, I found any adjournment was unreasonable and prejudicial to the landlord as the tenant has not paid the full amount of rent and currently owes the amount of \$2,500.00 in unpaid rent.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2017. Rent in the amount of \$995.00 was payable on the first of each month.

The landlord testified that the tenant was served with a notice to end tenancy on July 10, 2017, as they had not paid any rent for July 2017. The landlord stated that the tenant did not pay the outstanding rent and currently owes the amount of \$2,500.00.

The tenant testified that their girlfriend moved out of the rental unit and they did not pay their portion of rent. The tenant stated that the landlord will not sign a rent to intent form and add their new roommate to the tenancy agreement and that is why the rent has not been paid, as their roommate is unable to get money from social services

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is 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 this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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

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

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice.

Further, I have no authority under the Act, to force a landlord into a tenancy agreement with the tenant's roommate or force the landlord to sign a rent to intent form. The landlord has the right to conduct their business as they see appropriate; this is not contrary to the Act. It is the tenant's responsible to collect the rent from their roommate and pay the landlord the rent due.

The issue of the tenant's roommates rent subsidy payment is an issue between their social services support worker and the roommate, not the landlord.

Therefore, I dismiss the tenant's application without leave to reapply.

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.

As I have dismissed the tenant's application, 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 tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application 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: August 03, 2017

Residential Tenancy Branch