



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

On August 25, 2017, the tenants filed an Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”). Neither party file a copy of the One Month Notice.

On September 11, 2017, the tenants filed an Amendment to an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid rent (the “10 Day Notice”) that was issued and received on September 6, 2017. Filed with their amendment is a copy of the 10 Day Notice.

Preliminary and procedural matters

At the outset of the hearing the tenant RD stated that they have vacated the premises. The co-tenant JC remains in the rental unit. The tenants were informed that until the tenancy is legally ended in accordance with the Act, they are both jointly and severally liable for the actions of each other under the tenancy agreement.

From the outset of the hearing the tenants were argumentative. They allege that they did not file an amendment to their application, and that they did not receive a 10 Day Notice from the landlord and the only matter to consider is the One Month Notice.

I have thoroughly reviewed the original file. The tenant RD signed the amendment and the tenants filed a copy of the 10 Day Notice as evidence. After lengthy discussion on their amended application the tenant RD admitted, that their girlfriend filed the amendment.

I find it unreasonable that the tenants would deny making the amended application or receiving the 10 Day Notice, when their own evidence supports otherwise. Further, this leads me to question the credibility of the tenants.

Further, I find it is the tenants' responsibility to ensure they inform their co-tenants of the Application, and any amendment made on their behalf of the joint tenancy.

Issues to be Decided

Should the 10 Day Notice be cancelled?
Should the One Month Notice be cancelled?

Background and Evidence

The landlord testified that they served the tenants with the 10 Day Notice, on September 6, 2017. The landlord stated the tenants did not pay the outstanding rent of \$3,775.00, and have not paid any rent for any subsequent months.

The tenants testified that they do not agree that they owe the landlord any money stated in the 10 Day Notice, except for the amount of \$775.00. The tenants later attempted to recant their testimony.

Analysis

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

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

Under the legislation the tenants may dispute the 10 Day 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 had no merit. The tenants first admitted rent of \$775.00 was not paid, and later attempted to recant their version. I find the tenants credibility lacking.

Then the tenants were argumentative and attempting to provide evidence that is not relevant to the 10 Day Notice, as a tenant must pay rent in accordance with section 26 of the Act.

The tenants provided no supporting evidence to prove the full rent was paid at the time the 10 Day Notice was issued, such as a cancelled cheque or e-transfers, or that any outstanding rent was paid within five days of receiving the 10 Day Notice, which they acknowledged in their amended application that it was received on September 6, 2017.

I find the 10 Day Notice is valid and enforceable. I find the tenancy legally ended on September 17, 2017, which is the effective date in the 10 Day Notice, and the tenants have been overholding the premise since that date. Therefore, I dismiss the tenants' application to cancel the 10 Day Notice.

As I have dismissed the tenants' application on the basis of the 10 Day Notice, I find it is not necessary to consider the merits of the One Month Notice. Further, a copy of the One Month Notice was not provided by either party for my review or consideration.

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

As the tenants' application is dismissed I find the landlord is entitled to an order of possession pursuant to section 55 of the Act.

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 tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants' 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: October 11, 2017

Residential Tenancy Branch