



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crook C/O Sutton-Hymark Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for emergency repairs - Section 32.

The Tenant did not attend the hearing. The hearing was scheduled to commence at 9:00 a.m. and lasted until 9:18 a.m. As the Tenant did not appear to pursue its claims in the application I dismiss the Tenant’s application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The written tenancy agreement provides that rent of \$1,400.00 is payable on the first day of each month. The rent payable does not include any utilities. The Tenant pays for gas and hydro on its own account with the utility providers. There is nothing in the tenancy agreement that requires the Tenant to pay any utility to the Landlord. The Landlord verbally informed the Tenant that the water bill was payable to the Landlord. The Tenant has never paid any water bills to the Landlord. The Landlord provided

copies of emails sent to the Tenant emails on May 12, July 11 and August 17, 2017. It is noted that none of the emails make any demand for payment by any date.

The Tenant failed to pay rent for November 2017 when it was due. On November 8, 2017, the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by placing the Notice on the unit door. The Notice sets out unpaid rent of \$1,400.00 due November 1, 2017. The Tenant paid the full rent outstanding as stated on the Notice on November 16, 2017. The Notice also sets out unpaid utilities of \$626.03 indicating that this amount was not paid after a written demand on October 11, 2017. The Landlord did not provide any copy of any demand letter dated October 11, 2017.

Analysis

Section 90(c) of the Act provides that a document that is given or served by attaching a copy of the document to a door or other place, the document is deemed to be received on the 3rd day after it is attached. Based on the Landlord's undisputed evidence that the Notice was given to the Tenant by posting it on the door on November 8, 2017 I find that the Notice is deemed to have been received by the Tenant on November 11, 2017.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must, inter alia, state the grounds for ending the tenancy. In order not to be conflict with other sections of the Act I consider that this section implicitly requires the stated grounds to be one of the grounds as provided under the Act and that this section does not apply where the Notice is otherwise not effective under the Act.

Section 46(4) of the Act provides that within 5 days after receiving a notice for unpaid rent, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has been deemed to have received the Notice on November 11, 2017 I find that the Tenant had until November 16, 2017 to pay the full rent. Based on the Landlord's evidence that the outstanding rent was paid in full on November 16, 2017 I find that the Notice in relation to the rent has no effect and the Landlord is therefore not entitled to an order of possession.

Section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy. Based on the Landlord's evidence of the written tenancy agreement I find that it does not contain any requirement for the Tenant to pay any utility to the Landlord. There is no evidence that the Tenant ever acted on any promise to pay the water utility. For these reasons I find that the tenancy agreement does not require the Tenant to pay the Landlord for the water utility. As such I find that the Notice has no basis to for the stated grounds provided under the Act to end the tenancy for unpaid utilities. Further there is no evidence of any demand letter dated October 11, 2017 and even if there were, the Notice was issued prior to 30 days from October 11, 2017. As the prior emails do not include any demand to pay utilities by any date I do not consider these to be demand letters. For the above reasons I find that the Landlord is not entitled to an order of possession.

Conclusion

The Tenant's application is dismissed.

The Landlord is not entitled to 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: February 02, 2018

Residential Tenancy Branch