



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), issued on April 2, 2018.

Both parties appeared, gave affirmed 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.

Preliminary and Procedural matter

At the outset of the hearing the landlord’s agent indicated that they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) on May 2, 2018. The agent stated the tenant did not pay the outstanding rent and has not paid rent for June 2018.

The tenant acknowledged that they received the 10 Day Notice on May 2, 2018. The tenant stated that they did not make an application to dispute the 10 Day Notice, within five days, as they were informed that it would be dealt with at today’s hearing.

Both parties agreed that the tenant’s application should be amended to include the 10 Day Notice. As the tenant’s time to file a dispute has expired, and the parties agreed that it should be dealt with at today’s hearing. I find it appropriate to amend the tenant’s application to include the request to cancel a 10 Day Notice.

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.

Issue to be Decided

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

Background and Evidence

The tenant testified that they received the 10 Day Notice on May 2, 2018. The tenant stated that they did not pay the outstanding rent for May and has not paid any rent for June 2018.

The tenant testified that they did not complete any emergency repairs, and they do not have an order from an Arbitrator authorizing them to deduct any money from the rent. The tenant stated that they have not paid rent because they have pets and other financial responsibilities and were told they did not have to pay rent until this matter was heard.

The landlord seeks an order of possession.

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 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 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.

I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. The evidence of the tenant was that they have not paid any rent for May or June 2018.

Further, the tenant admitted that they had no authority under the Act, to withhold rent, as they did not pay for emergency repairs or have an order from an Arbitrator to withhold rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so, based on the personal circumstances.

I find the tenant has breached section 26 of the Act by failing to pay rent. I find the 10 Day Notice, issued on May 2, 2018, is valid and enforceable. I find the tenancy legally ended on the effective date of the 10 Day Notice, which was May 12, 2018. I find the tenant is now overholding the rental unit. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

As I have ended the tenancy for the tenant's failure to pay rent, I do not need to consider the merits of the One Month Notice, for late payments of rent.

Since I have dismissed the tenant's application, 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. 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: June 13, 2018

Residential Tenancy Branch