



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, PSF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 62.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Naming of the Landlord

On September 12, 2018 the tenants applied for dispute resolution naming the landlord as the respondent. During the hearing the parties agreed that the landlord was improperly named in the application, specifically the landlord's last name was not indicated. The tenants consented to an amendment. Accordingly, I amend the tenants' application to include the landlord's last name as provided during the hearing.

Preliminary Issue – Service of the Application

The tenant testified that on September 13, 2018 he posted the tenants' application for dispute resolution to the landlord's door. Section 89 of the *Act* establishes that when a tenant serves an application for dispute resolution it must be served by leaving it directly with the landlord, the landlord's agent, or by registered mail. The landlord denied receipt of the tenants' application. As evidenced by the tenant's own testimony, the tenants did not serve the application in accordance with the *Act*. In the absence of the

landlord's confirmation of receipt, I find that I cannot determine the application was sufficiently served. Therefore the tenants' application is dismissed.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end 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. Accordingly, I must determine whether the landlord is entitled to an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2018 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenants did not remit a security deposit at the start of the tenancy. The parties entered into an agreement in which the tenants would restore the unit in exchange for the first three months' rent. The tenants continue to reside in the rental unit.

A 10 Day Notice was issued to the tenants on September 6, 2018 by way of posting to the rental unit door where the tenants reside. The notice indicates an effective move-out-date of September 15, 2018. The tenants confirm receipt of the 10 Day Notice.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within time, but the application is dismissed, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. Accordingly I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective **two (2) days after service on 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: October 25, 2018

Residential Tenancy Branch