



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 4, 2018 (the "Application"). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2018 (the "Notice"). The Tenants also sought reimbursement for the filing fee.

The Tenants did not appear at the hearing. The Landlord did appear. The Landlord confirmed the Tenants are still living at the rental unit. The Landlord sought an Order of Possession.

I waited 10 minutes, until 11:10 a.m., to allow the Tenants to participate in this hearing scheduled for 11:00 a.m. The Tenants did not call into the hearing. I proceeded with the hearing in the absence of the Tenants.

I confirmed the correct spelling of the Landlord's name and amended the Application to reflect the correct spelling. This is also reflected in the style of cause.

The Landlord advised that he had submitted evidence prior to the hearing. I had not received this evidence. The Landlord advised he did not receive a receipt for the evidence submission online. Given this, I advised the Landlord I would not allow him to re-submit the evidence as I was not satisfied the evidence was uploaded properly to begin with.

I explained the hearing process to the Landlord and answered his questions in relation to the process. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. The Landlord provided affirmed testimony.

The Tenants had submitted evidence prior to the hearing, including a copy of the Notice. I have considered the Notice. I have not considered any further evidence of the Tenants as the Tenants failed to appear and present their evidence as required by rule 7.4 of the Rules of Procedure (the "Rules"). I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice pursuant to section 55 of the *Act*?

Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement. There is a written agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started January 18, 2018 and is a month-to-month tenancy. Rent is \$1,250.00 per month due on the first of each month.

The Notice states the Tenants failed to pay \$1,250.00 in rent that was due September 1, 2018 and \$540.00 for utilities following a written demand on September 1, 2018. It is addressed to the Tenants and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of September 12, 2018.

The Landlord confirmed he served both pages of the Notice on Tenant S.H. in person at the rental unit on September 2, 2018.

The Landlord confirmed that the Tenants failed to pay September rent and that this is what is reflected on the Notice. The Landlord testified that the Tenants did not pay any of the outstanding rent or utilities after the Notice was issued. The Landlord testified that the Tenants had no authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Landlord testified that the Tenants are responsible for 50% of the utilities each month. He said the parties have agreed the Tenants will pay \$225.00 per month by the first of each month and that this amount is based on the utility bills from the previous year. The Landlord testified that he sent a demand for the utilities by email to the Tenants in August.

Our records indicate the Tenants disputed the Notice on September 4, 2018.

Analysis

Rule 7.3 of the Rules states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenants failed to attend the hearing and provide evidence regarding their dispute of the Notice. In the absence of evidence from the Tenants regarding the basis for their dispute, the Application is dismissed without leave to re-apply.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I have dismissed the Tenants' Application and found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession for the rental unit.

I also note that I accept the undisputed testimony of the Landlord that the Tenants had no authority to withhold rent and never paid the outstanding rent. Therefore, section 46(3) and 46(4)(a) of the *Act* do not apply.

I grant the Landlord an Order of Possession effective two days after service on the Tenants as the effective date of the Notice has passed and the Tenants have not paid rent for September or October.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession pursuant to section 55 of the *Act*. The Order is effective two days after service on the Tenants. The Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 19, 2018

Residential Tenancy Branch