



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's 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.

The tenant's agent (the "tenant") and 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. The tenant confirmed he was an agent of the tenant named in this application, and had authority to speak on her behalf.

At the outset of the hearing, the landlord confirmed that she had received the tenant's application therefore I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Both parties testified to providing each other with a second evidence package. The landlord confirmed receipt of a second package from the tenant but contended that because it was late she did not have adequate time to provide a response. The tenant disputed receiving the landlord's second package served through regular mail. Neither package is relevant to the finding required in this dispute, therefore they were not considered.

Preliminary Issue – Landlord's Application

At the conclusion of the hearing, the tenant testified that he had received notification of another hearing related to an application filed by the landlord and this matter was scheduled to be heard at a later date. The landlord requested that her application be heard with the tenant's application during this hearing. The tenant was not agreeable to the landlord's request as he testified that he did not have an opportunity to adequately review the application. I declined the landlord's request as it would unfairly prejudice the tenant.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, 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 March 1, 2018 on a fixed term until February 28, 2019. Rent in the amount of \$2,600.00 is payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$1,895.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the unit.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). During the hearing the tenant testified that the 10 Day Notice was dated October 11, 2018. This claim is incongruent with the tenant's application package which includes a copy of the 10 Day Notice dated October 1, 2018. Accordingly I find the 10 Day Notice dated October 1, 2018 was served and received by the tenant.

The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$5,795.00 due October 1, 2018 and utilities in the amount of \$3,104.16 with a written demand issued August 9, 2018.

The landlord testified that the tenant has not paid any rent since August 2018 and the 10 Day Notice included rent arrears from months gone by. During the hearing, the tenant confirmed rent had not been paid since August 2018. The tenant testified that rent was withheld because the tenant did not have power for some duration in June 2018. The tenant testified that he presumed utilities were included in rent.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent 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. The tenant filed the application within five days but at no time did the tenant argue that rental arrears or utilities had been paid in full; instead he testified that he withheld rent on the

basis that the tenant had no power and failed to pay utilities on the presumption that it was included in rent.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*, *Regulations* or tenancy agreement. Under the *Act*, the tenant was obligated to pay rent arrears on October 1, 2018 and failed to do so.

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. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

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: November 16, 2018

Residential Tenancy Branch