



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

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; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62.

The tenant 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.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

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?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 10, 2016 on a month-to-month basis. Rent in the amount of \$468.00 is payable on the first of each month. The tenant remitted a security deposit in

the amount of \$225.00 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 the 10 Day Notice, dated November 7, 2018, by way of posting. This 10 Day Notice indicates rent in the amount of \$468.00 due October 1, 2018 remains outstanding and states an effective move-out date of November 13, 2018.

The landlord testified that because the tenant has provided a cheque in the past that was returned due to insufficient funds, he refused to accept the tenant's cheque on October 3, 2018 for October rent. The landlord testified that he told the tenant he would accept cash, certified cheque, bank draft or e-transfer only. In an effort to collect rent by way of e-transfer, the landlord testified that he provided the tenant with his personal email address.

The tenant testified that the landlord refused her cheque on October 3, 2018 and again on October 5, 2018. She acknowledged receipt of an email address but contended that it did not belong to the landlord and therefore did not use it to pay 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 testified that she offered rent and it was refused. The tenant received the 10 Day Notice on November 7, 2018 and filed her application on November 8, 2018, well within the five days allowable under the *Act*.

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. The tenancy agreement submitted by the parties does not indicate the method by which rent is to be paid; rather it simply indicates that the tenant is responsible for paying rent.

The landlord's requirement that rent be paid in one of four standard payment methods is not a contravention of the *Act*, *Regulations* or tenancy agreement. Although a method of payment by cheque may have been established, I find that once this payment proved unsuccessful, the landlord had every right to impose a method he knew to be secure. The burden lies with the tenant to ensure rent is received by the landlord in a method

accepted by the landlord. In this case the tenant acknowledged she was told the landlord would not accept her cheque and was given multiple other means to pay her rent, yet 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 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*.

The tenant did not provide testimony or evidence in relation to the other remedy she sought in his application therefore this portion of her claim is dismissed without leave to reapply.

Conclusion

The tenant's 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: December 05, 2018

Residential Tenancy Branch