



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 19, 2018 (the “Application”). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”). The Tenant also sought to suspend or set conditions on the Landlord's right to enter the rental unit.

The Tenant did not appear at the hearing. The Property Manager appeared at the hearing for the Landlord. The Property Manager confirmed the Tenant is still living at the rental unit. The Property Manager sought an Order of Possession on behalf of the Landlord.

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

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. The Property Manager confirmed the Landlord received the hearing package. The Property Manager advised that the Landlord's evidence was not served on the Tenant. Given that the evidence was not served in accordance with the Rules of Procedure, I have not considered the Landlord's evidence submitted prior to the hearing.

The Landlord had not submitted a copy of the Notice. I told the Property Manager a copy of the Notice could be submitted by 4:00 p.m. on the date of the hearing. The Property Manager did submit the Notice as requested and I have considered the Notice.

I explained the hearing process to the Property Manager who did not have questions when asked. The Property Manager provided affirmed testimony.

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 Property Manager testified as follows in relation to a tenancy agreement. There is a written agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started November 1, 2017 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent is \$1,200.00 per month due on the first of each month. The agreement is signed by the Landlord and Tenant.

The Notice states the Tenant failed to pay \$2,000.00 in rent that was due November 1, 2018 and \$156.50 for utilities following a written demand on November 1, 2018. It is addressed to the Tenant and relates to the rental unit. It is signed and dated November 16, 2018 by the Property Manager. It has an effective date of November 26, 2018.

The Property Manager testified that she posted both pages of the Notice on the door of the rental unit on November 16, 2018.

The Property Manager testified that the Tenant failed to pay \$800.00 of the rent for October and \$1,200.00 in rent for November. She confirmed that this is what is reflected on the Notice. The Property Manager testified that the Tenant has not paid any rent since the Notice was issued. The Property Manager testified that the Tenant had no authority under the *Residential Tenancy Act* (the "*Act*") to withhold rent.

The Property Manager testified in relation to outstanding utilities which I have not considered here as the Property Manager said no written demand for utilities was provided to the Tenant.

Our records indicate the Tenant disputed the Notice on November 19, 2018.

Analysis

Rule 7.3 of the Rules of Procedure 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 Tenant failed to attend the hearing and provide evidence regarding the Application and his dispute of the Notice. In the absence of evidence from the Tenant regarding the basis for the Application and his dispute of the Notice, 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 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 Property Manager that the Tenant 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 Tenant as the effective date of the Notice has passed and the Tenant has not paid any rent since 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 Tenant. The Order must be served on

the Tenant. If the Tenant does 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: January 07, 2019

Residential Tenancy Branch