



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing was convened as a result of the Tenants Application for Dispute Resolution, made on November 28, 2018 (the “Application”). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 28, 2018 (the “10 Day Notice”);
- an order that the Landlord comply with the *Act*, regulation, and/or tenancy agreement; and
- Recovery of the filing fee.

Tenant A.M. as well as the representative for the Landlord H.G. attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

A.M. advised that she served the Landlord with the Application package via registered mail. H.G. confirms having received the package on behalf of the Landlord. A.M. admits that she failed to serve her documentary evidence to the Landlord.

H.G. confirms that he did not receive the evidence which the Tenants had submitted to the Residential Tenancy Branch. H.G. stated that he was not concerned about this and wanted to continue with the hearing.

According to the Residential Tenancy Branch Rules of Procedure 3.14; documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

While H.G. acknowledged that he did not receive the evidence from the Tenants, he was still willing to proceed with the hearing in lieu of an adjournment. For this reason, the evidence submitted to the Residential Tenancy Branch by the Tenants will not be considered in this Hearing. Only oral testimony from A.M. will be considered in lieu of the documentary evidence.

H.G. testified the Tenants were served with his documentary evidence via registered mail. A.M. acknowledged receipt. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?
4. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties testified that the tenancy began on November 1, 2018. Rent in the amount of \$2,595.00 is due to be paid to the Landlord by the first day of each month. H.G. provided a copy of the Tenancy Agreement which indicated a rent amount of \$2,600.00 due each month, along with a security deposit in the amount of \$2,600.00. Both parties agreed that the rent and security deposit should have read \$2,595.00.

H.G testified that he received a cheque from the Tenants in the amount of \$2,595.00 for the security deposit as well as another cheque in the amount of \$2,595.00 for November 2018 rent. H.G. testified that attempted to deposit both cheques at the bank, however, both cheques bounced.

A.M confirms that the cheques bounced and testified that she has not paid any amount towards the security deposit or November 2018 rent to this date.

H.G. states that he subsequently served the Tenants with a 10 Day Notice via email on November 28, 2018. Although H.G acknowledges that this was not an approved form of service, A.M confirms having received the 10 Day Notice on November 28, 2018.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$5,198 which was due on November 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

Both parties agreed that the Tenants have failed to pay rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Tenants disputed the 10 Day Notice within the appropriate timelines.

A.M testified that she doesn't feel as though the Landlord is entitled to charging her more than half a month's rent for security deposit and wishes that the Landlord complies with the *Act*. Regardless, A.M. confirms that her cheques have bounced and that she has not made any payments to the Landlord.

Analysis

Section 26 of the *Act* states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations,

or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants failed to pay the rent due for the month of November 2018 in the amount of \$2,595.00 as required under the tenancy agreement, within five days of receiving the 10 Day Notice.

I dismiss the Tenant's application to cancel the 10 Day Notice dated November 28, 2018, without leave to reapply.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As the Tenants were not successful with their Application the Tenants are not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlord is granted an order of possession.

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: January 04, 2019

Residential Tenancy Branch