



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI LRE MNDCT

Introduction

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

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated December 23, 2018.
- a monetary order for money owed or compensation for damage or loss;
- to dispute a rent increase
- an order to restrict or suspend the Landlord's right to enter

The Tenant R.M., the Landlord and the Landlord's representative R.K. attended the hearing, each provided affirmed testimony.

R.M. testified that he served the Landlord in person with the Application package as well as documentary evidence on December 28, 2018. R.K. confirmed receipt. R.K. testified that the Tenants were served the Landlord's evidence in person on January 9, 2018. R.M. confirmed this service.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to sections 88 and 89 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, to dispute a rent increase, and order to restrict or suspend the Landlord's right to enter are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated December 23, 2018, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on February 1, 2013. Currently, rent in the amount of \$900.00 is due to be paid to the Landlord by the first day of each month. Neither party objected to the amount of rent owed to the Landlord each month. A

security deposit in the amount of \$300.00 was paid to the Landlord. Neither party provided a copy of the tenancy agreement in their documentary evidence.

On behalf of the Landlord, R.K. testified that the Tenants failed to pay rent in the amount of \$450.00 for November 2018 as well as \$900.00 for December 2018.

R.K. stated that the Landlord served the Tenants in person with the 10 Day Notice dated December 23, 2018 with an effective vacancy date of January 2, 2019. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$1,350.00, \$450.00 of which was due on November 1, 2018, as well as \$900.00 which was due on December 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. R.M. confirmed having received the notice on December 23, 2018 and disputed the 10 Day Notice within the appropriate timelines.

R.K. testified that the Tenants have also failed to pay rent for the month of January 2019 in the amount of \$900.00. The Landlord submitted copies of previous rent receipts confirming rent payments made by the Tenant to the Landlord each month, dating back to December 2016.

R.K. indicated that the Tenants have made no rent payments to the Landlord since the 10 Day Notice date December 23, 2018 was issued.

In response, Tenant R.M. testified that he has paid rent in full for November 2018, December 2018 and January 2019. R.M. stated that he paid the rent in cash on the first day of each month, and that the Landlord did not provide him a rent receipt.

R.M. further clarified that his Application to dispute a rent increase did not relate to his application to cancel the 10 Day Notice Dated December 23, 2018 for unpaid rent. He stated that it was his understanding that rent in the amount of \$900.00 was owed to the Landlord on the first day of each month. R.M. testified that he had paid rent in full.

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.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the 10 Day Notice dated December 23, 2018, R.K. testified that the Landlord served the 10 Day Notice in person, to the Tenants on December 23, 2018. R.M. acknowledged receipt on this date and in this manner. Therefore, pursuant to section 88 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord submitted copies of previous rent receipts confirming rent payments made by the Tenant to the Landlord each month, dating back to December 2016. I find that the Landlord has established a consistent pattern of providing the Tenants with a rent receipts following payments of rent.

I find that R.M. agreed that rent in the amount of \$900.00 is due to the Landlord on the first day of each month. R.M. testified that his Application to dispute the rent increase was unrelated to cancelling the 10 Day Notice. For these reasons, the Tenants Application to dispute a rent increase is dismissed with leave to reapply.

Although the Tenant testified that they had paid the \$900.00 in rent owed on time and in full for November, December, and January, they did not provide any documentary or other evidence to support this testimony. On the other hand, the Landlord testified that rent was not paid for that time period and provided numerous rent receipts for rent previously paid by the Tenant over the course of the tenancy.

I find the Landlord has established a consistent pattern of issuing a rent receipt when rent is paid. For these reasons, I find it more likely than not in this case, the absence of rent receipts demonstrates that rent was not paid as stated by the Landlord. I am satisfied on a balance of probabilities that the Tenants owed the Landlord \$1,350.00,

the amount shown on the 10 Day Notice, and that no rent has been paid since. As a result, I dismiss the Tenant's application to cancel the 10 Day Notice dated December 23, 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 should be served onto the Tenants as soon as possible. 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.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and 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 *Residential Tenancy Act*.

Dated: February 1, 2019

Residential Tenancy Branch