



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRO-GRESS CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 16, 2019 (the "Application"). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2019 (the "Notice").

The Tenant appeared at the hearing with a Legal Advocate. The Representative for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties confirmed the correct address of the rental unit. The Representative confirmed the correct name of the Landlord. Both of these changes are reflected on the front page of this decision.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in relation to this.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

The Tenant filed the Application under the *Manufactured Home Park Tenancy Act*. A written tenancy agreement and the Notice had been submitted as evidence. Both show this matter relates to the *Residential Tenancy Act* (the "Act"). An Information Officer with the Branch confirmed with the Tenant that the Application should have been filed under the *Act* and not the *Manufactured Home Park Tenancy Act*. I have proceeded on the basis that this matter falls under the *Act* in the circumstances.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Representative and Tenant in relation to the rental unit. The tenancy started December 01, 2014 and is a month-to-month tenancy. Rent is \$550.00 per month due on the first day of each month.

The Notice states the Tenant failed to pay \$202.90 in rent that was due January 01, 2019. It is addressed to the Tenant and refers to the rental unit address. It is signed and dated by the Representative. It has an effective date of January 21, 2019. The Notice is on an old form. The Legal Advocate took issue with this as well as the wording of the form which tells tenants they can pay or dispute the notice.

There was no issue that the Tenant received both pages of the Notice January 11, 2019 posted to the door of the rental unit.

The Tenant did not dispute that he owed \$202.90 in rent for January when the Notice was issued.

The parties agreed on the following. The full rent amount was usually paid by a third party directly to the Landlord. As of January 01, 2019, the payor changed and did not pay the full rent amount.

The Tenant testified that he spoke to the Representative on January 02, 2019 about the rent and the Representative did not know how much was outstanding. He said the Representative was going to let him know but did not and instead served him with the Notice.

The Representative agreed he did not know how much rent was outstanding when he spoke to the Tenant. He agreed that he told the Tenant he would let him know the

amount outstanding and that he did not do this but instead served the Tenant with the Notice.

The Tenant acknowledged that he did not pay the outstanding rent when he was issued the Notice. He testified that he disputed the Notice on advice of others and that he did not read the Notice.

The Representative sought an Order of Possession effective March 15, 2019.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless the tenant has a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

...

Section 55(1) of the *Act* requires me to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

There is no issue the Tenant owed \$550.00 in rent by January 01, 2019. There also is no issue the third party payor paid partial rent for January 01, 2019 and that a further \$202.90 was outstanding as the Tenant agreed with this. The Tenant did not take the position that he had authority under the *Act* to withhold rent. I find the Tenant was required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Here, the issue is that the Tenant spoke to the Representative about the amount of rent outstanding and the Representative did not know. I agree the Representative should have told the Tenant how much rent was outstanding prior to issuing the Notice. However, I also find that the Tenant had failed to pay rent as required and therefore the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

There is no issue that the Tenant received the Notice January 11, 2019 posted on the door of the rental unit. I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the Landlord used an old form and agree the Landlord should not have done so. However, I find the form used contains the necessary information such that it complies with section 52 of the *Act*. I have considered the submissions of the Legal Advocate in relation to the wording of the Notice and that it tells tenants they can pay or dispute the Notice. However, tenants must have a valid basis for disputing the Notice. I find this is implied on page 2 of the Notice where it outlines the reasons tenants can dispute the Notice.

Here, the Tenant did not provide a valid basis for disputing the Notice. The Tenant agreed he failed to pay rent in the amount of \$202.90 by January 01, 2019. He did not submit that he had authority to withhold rent. The issue was that the Landlord had not told him how much rent was outstanding. However, the Tenant was aware of how much was outstanding when he received the Notice. I find the Tenant should have paid the outstanding rent when he received the Notice which would have cancelled the Notice.

The Tenant had five days from receipt of the Notice on January 11, 2019 to pay or dispute it under section 46(4) of the *Act*. The Tenant acknowledged he did not pay the outstanding rent. The Tenant disputed the Notice January 16, 2019, within the five-day time limit set out in section 46(4) of the *Act*. However, I do not find that the Tenant had a valid basis to dispute the Notice and therefore dismiss the Application.

Given I have dismissed the Application and have found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on March 15, 2019.

Conclusion

The Tenant's dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective at 1:00 p.m. on March 15, 2019. This Order must be served on the Tenant. If the Tenant does not comply with this 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: March 07, 2019

Residential Tenancy Branch