



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite waiting more than 20 minutes for the tenant to appear.

The landlord stated that the tenant served her with the proceeding package by email. Although email is not an acceptable method of serving a hearing package upon a respondent, the landlord described the documents she received from the tenant via email and I was satisfied the landlord did receive the hearing package that was generated by the Residential Tenancy Branch. The landlord also indicated that she prepared to deal with this matter regardless as to how she was served. Accordingly, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Since the tenant failed to appear for her hearing, and the landlord appeared and was prepared to respond to the tenant's application, I dismissed the tenant's application without leave to reapply.

Where a tenant applies to cancel a Notice to End Tenancy and the tenant's application is dismissed, the landlord shall be granted an Order of Possession as provided under section 55(1) of the Act. One of the requirements of section 55(1) is that the Notice to End Tenancy meets the form and content requirements of the Act. I noted that the tenant had failed to provide the Residential Tenancy Branch with a copy of the 10 Day Notice that she sought to have cancelled even though this is a requirement under the Rules of Procedure. The landlord confirmed that she had a copy of the subject 10 Day Notice in front of her and I asked the landlord to read it into evidence, which she did. I also directed the landlord to provide me with a copy of the subject Notice and the

tenancy agreement by uploading it to the Residential Tenancy Branch service portal, which she did. Accordingly, I proceed to consider whether the landlord is entitled to an Order of Possession under section 55(1).

The style of cause of the decision and Order have been amended to reflect a unit number for the rental unit, as indicated on the tenancy agreement and 10 Day Notice.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that the tenancy started on July 15, 2018 and the tenant paid a security deposit of \$900.00. The tenant was required to pay rent of \$1,800.00 on the first day of every month.

The landlord testified that the tenant failed to pay any rent for January 2019, the tenant paid only \$1,150.00 toward rent in February 2019; and, only \$900.00 was paid toward rent on March 2, 2019. On March 2, 2019 the landlord posted the subject 10 Day Notice on the door of the rental unit. The 10 Day Notice indicates rent of \$3,350.00 was outstanding and has a stated effective date of March 13, 2019. The 10 Day Notice is signed and dated by the landlord and includes the second page.

On March 6, 2019 the tenant filed to cancel the 10 Day Notice. The tenant indicated that she was experiencing financial difficulty due to loss of hours at work. I dismissed the tenant's application because she failed to appear at the hearing; however, the inability to pay rent is not a basis for cancelling a 10 Day Notice under the Act.

The landlord testified that no payment has been received from the tenant since March 2, 2019 and the tenant continues to occupy the rental unit.

Analysis

Section 55(1) provides for circumstances when a landlord shall be provided an Order of Possession under a tenant's Application for Dispute Resolution. Section 55(1) provides:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice submitted to me, I am satisfied that it meets the form and content requirements of section 52 of the Act as it is in the approved form and it is duly completed by the landlord. The tenant's application to cancel the 10 Day Notice was dismissed during the dispute resolution proceeding. Therefore, I find that all of the criteria of section 55(1) of the Act have been met and I must provide the landlord with an Order of Possession.

Considering the effective date of the 10 Day Notice has long since passed and the landlord has lost rent for multiple months, I provided to the landlord with this decision an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave.

Pursuant to section 55(1) of the Act, the landlord is provided an Order of Possession effective two (2) days after service upon 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: April 26, 2019

Residential Tenancy Branch