



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On April 12, 2019, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On April 16, 2019, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant testified that she did not receive the Landlords Notice of Dispute Resolution proceeding documents.

The Landlord testified that he served the Notice of Dispute Resolution Proceeding using Canada Post express post sent on April 17, 2019. The Landlord testified that the Notice was sent to the Tenant at the dispute address.

The Landlord provided a copy of the Canada Post express receipt and mailing label at the end of the hearing. The evidence provided is consistent with the testimony of the Landlord during the hearing. The receipt provides that the Landlord sent mail to the Tenant addressed to the dispute address on April 17, 2019.

I find that pursuant to section 71(b) of the Act, the Notice of Dispute Resolution sent by the Landlord was sufficiently served to the Tenant on April 22, 2019, for the purposes of the Act.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the Landlord entitled to an order of possession and monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The parties testified that the tenancy began on October 15, 2018, as a fixed term tenancy to continue until August 31, 2019. Rent in the amount of \$1,300.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2019 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenant has failed to pay rent of \$1,300.00 that was due on April 1, 2019. Both parties provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant 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. The Tenant disputed the 10 Day Notice within the required timeframe.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of April 2019. The Landlord testified that the Tenant has not paid any rent since the 10 Day Notice was issued.

The Landlord testified that he has not received the \$1,300.00 owing for April 2019 and has also not received the \$1,300.00 owing for May 2019 rent.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$2,600.00.

In reply, the Tenant provided affirmed testimony that she has not paid the rent owing under the tenancy agreement for April and May 2019. She testified that she was waiting for the outcome of the hearing but is willing to pay the rent owing.

The Tenant testified that she was feeling harassed by the Landlord, and submitted that the Landlord was asking her to move out of the rental unit within 10 days so that he could occupy the unit. The Tenant testified that she did not want to pay the rent if she has to leave the unit.

The Landlord testified that recently the rent was paid late each month and the Landlords are feeling stressed about the situation. The Landlord testified that he is not interested in having the tenancy continue and he wants an order of possession for the rental unit.

Analysis

Section 26 of the Act states that a Tenant 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 Tenant received the 10 Day Notice and did not pay the rent owing under the tenancy agreement within five days.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. If the Tenant was concerned about the actions or behaviour of the Landlord, the Tenant could have applied for dispute resolution. The Tenant does not have the right to unilaterally decide to withhold payment of the rent. I find that the Tenant breached section 26 of the Act and breached a material term of the tenancy agreement which requires that the rent be paid by the first day of each month.

I dismiss the Tenant's application to cancel the 10 Day Notice dated April 5, 2019.

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 two (2) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant has failed to pay the rent owing under the tenancy agreement for the month of April 2019 and May 2019. The Tenant has lived in the unit without paying rent for close to two months and the Tenant is aware that the tenancy agreement requires that rent of \$1,300.00 is due each month. Pursuant to section 64 of the Act, I allow the Landlord's claim to be amended to include May 2019, rent in the amount of \$1,300.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,700.00 comprised of \$2,600.00 in unpaid rent for the above mentioned months and the \$100.00 fee paid by the Landlord for this hearing. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2019, and she did not have a legal right under the Act to withhold payment of the rent.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2019, is dismissed.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant.

The Landlord is granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$2,700.00.

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: May 28, 2019

Residential Tenancy Branch