



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). This hearing dealt with the tenant's application pursuant to section 46 of the *Act* for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

The Respondents called into this teleconference hearing at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 9:42 a.m. to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Respondents and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Applicant, I order the application dismissed without liberty to reapply.

In taking this action, I note that the tenant did not apply to cancel the 10 Day Notice until April 16, 2019, more than five days after being deemed to have received the landlords' 10 Day Notice on April 7, 2019.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

As the tenant provided written confirmation in their application for dispute resolution that they received the landlord's 10 Day Notice placed under or posted on the tenant's door by the landlord on April 4, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

The 10 Day Notice entered into written evidence by the parties identified a total of \$300.00 in unpaid utilities owing for the months of February, March and April 2019. At the hearing, Landlord CD (the landlord) confirmed that the amounts shown as owing in the 10 Day Notice were for the three months prior to the issuance of the 10 Day Notice.

The landlord also testified that the Ministry of Social Development and Poverty Reduction included a payment for utilities for February, March and April with the Ministry's shelter assistance cheque for May 2019. The landlord said that the tenant is in the process of vacating the rental unit, as a moving vehicle attended the rental unit the day before this hearing to remove most of the tenant's belongings. The landlord testified that the tenant did not stay at the rental unit the day before this hearing. The landlord said that they expected the tenant to vacate the rental unit the following day.

Analysis

Section 55(1) of the *Act* reads as follows:

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.*

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant’s notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

Section 46(6) of the *Act* reads as follows:

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Although I am dismissing the tenant's application, I advised the landlords at the hearing that their 10 Day Notice issued on April 4, 2019 did not comply with the provisions of section 46(6) of the *Act*, as there is no evidence that the landlords gave the tenant the required 30 days written notice of the outstanding utility charges. In addition, the landlords testified that they have received payment for these outstanding utility charges, which would have occurred within 30 days of the landlords having provided their 10 Day Notice, the first written demand for payment of the outstanding utilities. Only after 30 days had expired could the landlords have legally issued a 10 Day Notice for unpaid utility charges which would then have been legally been treated as unpaid rent in accordance with section 46(6) of the *Act*.

As I find that the landlords' 10 Day Notice does not comply with the requirements of section 46(6) and 52 of the *Act*, I am unable to issue an Order of Possession in the landlords' favour pursuant to section 55(1) of the *Act*.

In this case, it would appear that the tenant is already in the process of vacating the rental unit. In the event that the tenant does not surrender keys to the rental unit to the landlords, the landlords may post a written notice on the door of the rental unit seeking to inspect the premises within 24 hours of the posting of that notice for the purpose of determining whether the tenant has abandoned the rental unit.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 30, 2019

Residential Tenancy Branch