



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC. 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 tenants on April 12, 2019 (the "Application"). The tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 09, 2019 (the "Notice").

The Tenant appeared at the hearing. He advised that the second tenant named on the Application is his son who vacated the rental unit in March. He advised that his son should not be named on the Application. I have removed the son from the style of cause given this. However, I note that the son is a co-tenant on the tenancy agreement and therefore this decision will apply equally to him if he does still reside at the rental unit.

The Agent appeared for the Landlord.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The tenants had not. 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 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.

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, the Tenant and the Tenant's son. The tenancy started March 01, 2019 and is for a fixed term ending February 29, 2020. Rent is \$2,200.00 per month due on the first day of each month.

The Notice states that the tenants failed to pay \$2,200.00 in rent that was due April 01, 2019. It is addressed to the tenants and refers to the rental unit address, other than the postal code. It is signed and dated by the Agent. It has an effective date of April 24, 2019.

There was no issue that the Tenant received both pages of the Notice April 09, 2019 in person.

The Agent confirmed the tenants did not pay April rent and this is reflected on the Notice. The Tenant acknowledged that he did not pay April rent and that he has paid no rent since March.

The Tenant testified about discussions he had with a representative for the Landlord about vacating and return of the deposits. He spoke about issues he had with how the representative and Agent handled the Notice. He testified that he had an agreement with the representative that he would not pay rent for April. He said he is also disputing the Notice because he cannot afford to vacate.

The Agent denied that there was an agreement that the Tenant did not have to pay rent for April. He acknowledged that there were discussions between the parties about the Tenant vacating and not paying rent for April but testified that no agreement was ever reached between the parties.

Analysis

Section 26(1) of the *Act* requires a tenant 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 an arbitrator 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*.

Based on the written tenancy agreement, and acknowledgement by the parties that it is accurate, I find the Tenant was obligated to pay \$2,200.00 in rent for April by April 01, 2019 under the tenancy agreement.

There is no issue that the Tenant did not pay April rent as the parties agreed on this.

The Tenant testified that he had an agreement with a representative of the Landlord that he did not have to pay rent for April. The Agent denied there was such an agreement reached between the parties. The Tenant has not submitted any documentary evidence

in support of his position that there was such an agreement. I would expect such an agreement to be in writing given the importance of paying rent and of an agreement that rent is not due as usual. Given the conflicting testimony, and lack of evidence to support the Tenant's position, I do not accept that there was such an agreement.

The Tenant did not point to any other authority under the *Act* to withhold rent.

Therefore, I find the Tenant was required to pay April rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, 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 in person April 09, 2019. I find the Tenant was served with the Notice in accordance with section 88(a) 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 do not find that the absence of the postal code affects the validity of the Notice as it is clear it relates to the rental unit.

The Tenant had five days from receipt of the Notice on April 09, 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 April 12, 2019, within the five-day time limit set out in section 46(4) of the *Act*. However, I do not accept 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 two days after service on the Tenant. This Order will apply to all tenants and occupants of the rental unit under the tenancy agreement.

Conclusion

The tenants' dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective two days after service on the Tenant. 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: June 03, 2019

Residential Tenancy Branch