



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAMSEY MARINE CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, CNR, MNDT, FF

Introduction

The landlords and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "Notice") issued on April 15, 2019;
2. For a monetary order for money owed; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?
Is the tenant entitled to a monetary order?

Background and Evidence

The tenant testified that they received the Notice on April 16, 2019. The tenant stated that rent for February 2019, has not been paid. The tenant stated that they had an agreement with the landlord that they would pay the rent for February 2019; when they received their tax refund. The tenant stated that they expected it would be received in February 2019; however, they are still waiting for that refund.

The landlord's agent testified that there was no agreement with the landlord that the landlord would wait for the tenant's tax refund. The agent stated they have requested rent on several occasions and it has not been paid. Filed in evidence are text messages.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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 [form and content of notice to end tenancy].*

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

The tenant admits rent for February 2019, has not been paid. The evidence of the tenant was that they had an agreement to pay rent when they receive their tax refund. The evidence of the landlord's agent was that they deny any such agreement was made.

I do not accept the tenant's evidence that there was any such agreement. The text messages filed in evidence do not support this. Further, even if there was an agreement, I do not accept that it would be indefinite. The tenant was served with the Notice; rent was not paid within 5 days and remains outstanding. I find the tenant failed to pay rent in accordance with section 26 of the Act.

I find the Notice issue on April 15, 2019, is valid and remains in full force and effect. I find the tenancy legally end on the date specified in the Notice, April 26, 2019. The tenant is now overholding the premise.

Based on the above, I dismiss the tenant's application to cancel the Notice without leave to reapply. The tenant seeks moving cost in their application; I find the tenant is not entitled to moving cost as the tenancy has legally ended due to their failure to pay rent. The tenant was not successful they are not entitled to recover the cost of the filing. As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord was successful with their application, I find the landlord is entitled to recover the cost of the filing fee from the tenant. The landlord may deduct the amount of \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and is entitled to retain the above amount to recover the cost of the filing fee.

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: June 06, 2019

Residential Tenancy Branch