



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 07, 2019 (the “Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 02, 2019 (the “Notice”). The Tenants also sought to suspend or set conditions on the Landlord's right to enter the rental unit.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Representative. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in relation to this.

The Tenants’ request to suspend or set conditions on the Landlord's right to enter the rental unit simply relates to the Tenants wanting to remain in the rental unit. This raises the same issue as the dispute of the Notice. I told the Tenant I would consider the dispute of the Notice and not a request to suspend or set conditions on the Landlord's right to enter the rental unit. This request is dismissed without leave to re-apply.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing 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. The tenancy started April 01, 2019 and is for a fixed term ending April 01, 2020. Rent is \$1,300.00 per month due on the first day of each month.

The Notice states that the Tenants failed to pay \$1,300.00 in rent that was due June 01, 2019. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of June 12, 1982. The Tenant did not take issue with the form or content of the Notice.

The Representative testified that both pages of the Notice were posted to the door of the rental unit June 02, 2019. The Tenant acknowledged receiving both pages of the Notice June 02, 2019 posted to the door of the rental unit.

The Representative confirmed the Notice reflects outstanding rent for June. The Tenant acknowledged that June rent was not paid when the Notice was issued. The Tenant testified that unforeseen personal circumstances arose which resulted in the Tenants not being able to pay rent by June 01, 2019. This was the basis for the Tenants' dispute. The Tenant did not submit that the Tenants had authority under the *Residential Tenancy Act* (the "*Act*") to withhold rent and did not point to any section of the *Act* that permitted them to withhold rent.

The Tenant acknowledged that the Tenants have not paid any rent since the Notice was issued. She agreed that no rent for June or July has been paid. The Representative confirmed this. The Tenant testified that she asked the Landlord to use the security deposit towards rent.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail 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 tenants dispute a notice to end tenancy and the dispute 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 Tenants were obligated to pay \$1,300.00 for June rent by June 01, 2019.

There is no issue that the Tenants did not pay June rent by June 01, 2019 as the Tenant acknowledged this.

The Tenant testified that June rent was not paid due to unforeseen personal circumstances that resulted in the Tenants being unable financially to pay rent. This is not a basis under the *Act* to fail to pay rent. Nor can I consider unforeseen personal

circumstances on a dispute of a 10 Day Notice. The issue is whether the Tenants had authority under the *Act* to withhold rent. The Tenant did not submit that the Tenants had such authority. I find the Tenants did not have any authority under the *Act* to withhold rent.

I note the comment by the Tenant about asking the Landlord to use the security deposit towards rent. This is not the purpose of a security deposit and landlords have no obligation to agree to putting a security deposit towards unpaid rent during the tenancy. I also note section 21 of the *Act* which states, “[u]nless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.”

I find the Tenants were required to pay June rent by June 01, 2019 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

There is no issue that the Tenant received the Notice June 02, 2019 posted to the door of the rental unit as the parties agreed on this. I find the Tenants were served with the Notice in accordance with section 88(g) 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*. The effective date is obviously incorrect; however, this is automatically changed to June 12, 2019 pursuant to section 53 of the *Act*.

The Tenants had five days from receipt of the Notice on June 02, 2019 to pay or dispute it under section 46(4) of the *Act*. The Tenant acknowledged that no rent has been paid since the Notice was issued. The Tenants disputed the Notice June 07, 2019, within the five-day time limit set out in section 46(4) of the *Act*. However, the Tenants had no authority under the *Act* to withhold rent and have not provided a valid basis for disputing the Notice and therefore the dispute is dismissed.

Given I have dismissed the dispute, and 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 Representative sought an Order of Possession effective July 31, 2019. However, given the date of this decision, I issue the Landlord an Order of Possession effective two days after service on the Tenants.

Conclusion

The Tenants' dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants. If the Tenants do 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: July 29, 2019

Residential Tenancy Branch