



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 9, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 4, 2019 (the "10 Day Notice"); and
- an order that the Landlord comply with the *Act*, regulation, and/or tenancy agreement.

The Tenant, L.S., and the Landlord attended the hearing at the appointed date and time of the hearing and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by placing it in the Landlord's mailbox on July 11, 2019. The Landlord confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord did not provide any evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2015. The Tenant stated that rent in the amount of \$900.00 was due to the Landlord on the first day of each month. The Tenant stated that they receive government assistance in the amount of \$750.00 which is paid directly to the Landlord for rent each month. The Tenant stated that the remaining portion of the rent is paid by a housing subsidy. The Tenant provided a copy of shelter information form which is signed by the parties, which indicates that the monthly rent was \$900.00 per month and that the Tenants paid a security deposit in the amount of \$225.00.

The Landlord stated that the rent has always been \$1,160.00 and confirmed that the Tenants paid their portion of the rent in the amount of \$750.00 and that the remaining balance of \$410.00 was paid by the housing subsidy.

The Landlord stated that the Tenants' housing subsidy expired in July 2018. Therefore, the Landlord requested that the Tenants pay rent in full in the amount of \$1,160.00. The Landlord stated that the Tenants have only paid the full balance of rent in August 2018 and has failed to pay rent in full ever since. The Landlord stated that specifically, the Tenants have only paid \$750 per month from January 2019 to August 2019. To date, the Landlord stated that the Tenants owe rent in the amount of \$3,530.00.

The Landlord stated that he served the Tenants in person with the 10 Day Notice dated July 4, 2019 with an effective vacancy date of July 14, 2019. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$3,530.00. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenant confirmed having received the notice on July 4, 2019 and disputed the 10 Day Notice within the appropriate timelines.

In response, the Tenant stated that he feels as though the Landlord has illegally increased the amount of rent from \$900.00 to \$1,160.00. The Tenant has applied for an order that the Landlord comply with the Act with respect to rent increases. The Tenant acknowledged that the Tenants have only been paying rent in the amount of \$750.00 to the Landlord from January 2019 until this date as he doesn't agree with the increase of rent that is being asked of them by the Landlord.

Analysis

Section 26 of the Act states that Tenants 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.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the 10 Day Notice dated July 4, 2019, the Landlord stated that he served the 10 Day Notice in person, to the Tenants July 4, 2019. The Tenant acknowledged receipt on this date and in this manner. Therefore, pursuant to section 88 of the Act, I find the above document was sufficiently served for the purposes of the Act.

The parties did not agree on the amount of rent owed. I find that at the very least, the rent is \$900.00 a month which was expressed by the Tenant and confirmed in the Shelter Information Form submitted into evidence, which was signed by the parties. I find that the Landlord has provided insufficient evidence to demonstrate that the rent was \$1,160.00. Regardless, during the hearing, the parties agreed that the Tenants have only paid rent in the amount of \$750.00 from January 2019 to August 2019. The Tenant confirmed that he only paid this amount to the Landlord as he did not agree with the proposed rent increase to \$1,160.00.

I find that the Tenants were not entitled to deduct any portion of rent owed to the Landlord each month in accordance with Section 26 of the Act. Had the Tenants felt that the Landlord breached the Act by unlawfully increasing the rent, then they could have applied for remedies under the Act at that time.

As a result, I dismiss the Tenant's application to cancel the 10 Day Notice dated July 4, 2019, without leave to reapply.

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 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants' Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and 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 *Residential Tenancy Act*.

Dated: August 29, 2019

Residential Tenancy Branch