



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERUM PROPERTIES
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes CNR, OLC, FFL, OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Should the tenant be given an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. This tenancy began on February 1, 2014. The current monthly rent set is 1092.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$470.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on July 2, 2019 by posting the notice on the tenant's door. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service document. The landlord testified that the tenant made full rental payment on July 18, 2019 to which he was given a letter advising that it was for "use and occupation only" and that the tenancy was not reinstated. The landlord testified that the tenant made rental payments on August 1, 2019 and September 1, 2019 and was given the same "use and occupation" notice each time. The landlord testified that the tenant has made numerous rental payments by slipping the money under the managers door and is unclear as to why tenant would not continue that practice. The landlord testified that as the tenant did not pay the rent within five days of being deemed served the notice, the tenancy must end. The landlord requests an order of possession and an order allowing them to retain \$100.00 from the security deposit for the recovery of the filing fee for their application.

The tenant gave the following testimony. The tenant testified that he attempted to pay the rent on July 1, 2019 by knocking on the managers door, but no one answered. The tenant testified that he made numerous attempts in the subsequent days, but to no avail. The tenant testified that he could hear the manager in the suite saying, "don't answer the door". The tenant testified that he didn't feel comfortable leaving cash under the door. The tenant testified that he wants to stay in the building and will pay his rent by post dated cheque to avoid future issues.

Analysis

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

The landlord testified that they posted the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 2, 2019. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served on July 5, 2019. The tenant acknowledged and confirmed that he was served as noted by the landlord and that he did not make full rental payment until July 18, 2019. Section 46 of the Act addresses the issue before me as follows:

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]*.

(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.

Although the tenant filed to dispute the notice within five days of receiving it, he has not provided sufficient justification or basis to have the notice cancelled. Based on the landlord's extensive documentation and the tenant's own acknowledgment that he had not made payment within five days after receiving the notice; and not until July 18, 2019, I hereby find that the notice is of full effect and force. The landlord is granted an order of possession pursuant to section 55 of the Act, the tenancy is terminated. The landlord advised that the rent has been paid for September, therefore; the order of possession will take effect at 1:00 p.m. on September 30, 2019

The landlord is also entitled to retain \$100.00 from the security deposit in full satisfaction of their claim to recover the filing fee. The tenant has not been successful in his application.

Conclusion

The landlord is granted an order of possession and is entitled to retain \$100.00 from the security deposit. The tenant's application is dismissed in its entirety 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: September 05, 2019

Residential Tenancy Branch