



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 10, 2019 (the “Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 05, 2019 (the “Notice”). The Tenants sought reimbursement for the filing fee.

The Tenants did not appear at the hearing. The Landlord did appear with the Advocate. The Landlord confirmed the Tenants are still living at the rental unit. The Landlord sought an Order of Possession for the rental unit.

I waited eight minutes at the outset of the hearing to allow the Tenants to participate in this hearing scheduled for 9:30 a.m. The Tenants did not call into the hearing. I proceeded with the hearing in the absence of the Tenants. The hearing proceeded for 25 minutes in total.

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

The Landlord submitted evidence prior to the hearing. The Tenants did not. The Landlord confirmed receipt of the hearing package. The Landlord testified that he served his evidence on Tenant T.S. in person September 03, 2019. He advised that he provided the Tenants with one package of evidence addressed to both Tenants.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the Landlord’s evidence in accordance with section 88(a) of the *Residential Tenancy Act* (the “Act”). I also find the Landlord complied with rule 3.15 of the Rules of Procedure (the “Rules”) in relation to the timing of service of the evidence.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice pursuant to section 55 of the *Act*?

Background and Evidence

The Landlord submitted a written tenancy agreement. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started May 15, 2019 and is a month-to-month tenancy. Rent is \$1,040.00 per month. The Landlord confirmed rent is due on the first day of each month. The Tenants paid a security deposit of \$520.00. The agreement is signed by the Landlord and Tenants.

The Notice states the Tenants failed to pay \$2,040.00 in rent due June 01, 2019. It is addressed to the Tenants and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of July 16, 2019.

The Landlord testified that he served both pages of the Notice on Tenant T.S. in person July 05, 2019. The Landlord submitted a Proof of Service signed by a witness confirming this.

The Landlord and Advocate testified as follows. The \$2,040.00 on the Notice is incorrect and should state \$2,080.00 as the Tenants failed to pay June and July rent. The Tenants made the following payments after the Notice was issued:

- \$1,040.00 on July 19, 2019;
- \$280.00 on July 20, 2019;
- \$760.00 on July 28, 2019; and
- \$1,040.00 on August 19, 2019.

The Landlord submitted receipts showing the July payments. The Landlord and Advocate testified that the Tenants have not paid rent for September. The Landlord testified that the Tenants did not have authority under the *Act* to withhold rent.

Analysis

Rule 7.3 of the Rules states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenants failed to attend the hearing and provide evidence regarding their dispute of the Notice. In the absence of evidence from the Tenants regarding the basis for the dispute of the Notice, the Application is dismissed without leave to re-apply.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if tenants apply to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I acknowledge that the Notice states the Tenants failed to pay \$2,040.00 in rent due June 01, 2019 which is incorrect as, based on the undisputed testimony of the Landlord, the Tenants failed to pay \$1,040.00 due June 01, 2019 and \$1040.00 due July 01, 2019. However, I accept the undisputed testimony of the Landlord that \$2,080.00 in rent was outstanding as of July 05, 2019 when the Notice was issued. I find the Tenants would have been aware of this. I do not find that the mistake in the rent amount affects the validity of the Notice.

I have dismissed the Application and found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession for the rental unit.

I also note the following. I accept the undisputed testimony of the Landlord that the Tenants had no authority under the *Act* to withhold rent and find section 46(3) of the *Act* does not apply. I also accept the undisputed testimony of the Landlord and Advocate about what rent payments were made after the Notice was issued. This is supported by the receipts. I accept that the first payment made after the Notice was issued was on July 19, 2019. This was after the five-day time period to pay the outstanding rent and therefore section 46(4)(a) of the *Act* does not apply.

I issue the Landlord an Order of Possession effective two days after service on the Tenants as the effective date of the Notice has passed and I accept the undisputed testimony of the Landlord that there is still outstanding rent.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession pursuant to section 55 of the *Act*. The Order is effective two days after service on the Tenants. The Order must be served on the Tenants. If the Tenants do not comply with the 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: September 12, 2019

Residential Tenancy Branch