



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, CNC, O
For the landlords: OPR

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and for other relief.

The landlords applied for an order of possession for the rental unit pursuant to the 10 Day Notice.

The two listed landlords appeared along with their legal counsel; however, the tenant did not attend.

The landlord testified that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by personal delivery on July 25, 2019.

Based upon the undisputed submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord’s application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant’s absence.

The hearing process was explained to the landlords and they were given an opportunity to ask questions about the hearing process. Thereafter, the landlords were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

In the absence of the tenant to present her application, pursuant to section 7.3 of the Rules, I dismiss the tenant's application, without leave to reapply.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Background and Evidence

The parties submitted a copy of the written tenancy agreement which shows that this tenancy began on March 1, 2019, and monthly rent due by the tenant was \$375.00, due on the first day of the month. The evidence reflects that the tenant did not pay a security deposit.

The landlord submitted evidence that on July 16, 2019, she served the tenant with the Notice, by leaving it with the tenant, listing unpaid rent of \$375.00 owed as of July 1, 2019. The effective vacancy date listed on the Notice was July 17, 2019.

The landlord submitted that since the Notice was issued to the tenant, she did not pay the rent listed on the Notice or any further rent prior to vacating the rental unit on or near August 31, 2019.

The landlord maintained their request for an order of possession of the rental unit out of an abundance of caution, in case she returns to the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that she had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The tenant filed an application in dispute of the Notice; however, she failed to attend the hearing to prove she paid the rent or that rent was not owed. Her application was dismissed.

Based upon the landlords' undisputed evidence, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that she owed the amount listed on the Notice as unpaid rent, and that she failed to pay this rent prior to vacating.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant, pursuant to section 55(2) of the Act. The order of possession for the rental unit is attached with the landlords' Decision.

As to the issue of unpaid rent, although it was discussed at the hearing about whether the landlords wanted to increase their monetary claim to include unpaid rent for August 2019, after further review of the landlord's application, I determined that the landlord had not applied for a monetary claim or for recovery of their filing fee paid for this application.

As a result, I do not grant the landlords a monetary order or their filing fee. The landlords are at liberty to file another application for dispute resolution for monetary compensation.

Conclusion

The tenant's application is dismissed without leave to reapply as she failed to attend the hearing.

The landlords' application for an order of possession for the rental unit is granted.

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 12, 2019

Residential Tenancy Branch