



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, LRE, MT, FFL, OPRM-DR

Introduction

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* (the *Act*)

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for :

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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. 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 entered written evidence from his legal counsel that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent by registered mail to the tenant on August 9, 2019. I am satisfied that the landlord served this Notice to the tenant in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenant on August 14, 2019, the fifth day after its posting. Counsel advised that the item was unclaimed and returned on August 29, 2019 according to the Canada Post website.

Preliminary Issue – Tenants request for more time to file an application to dispute the notice pursuant to section 66 of the Act

Section 66 of the Act allows me to grant an extension of time for a tenant to make an application to dispute a notice to end tenancy “only in exceptional circumstances”. The tenants representative stated that the tenant was too ill to attend but did not provide any further information. He did not advise as to when the tenant became ill, the severity of the illness and what specifically ailed them. In addition, the representative did not provide documentation or even correspondence from the tenant to him, to corroborate this. Based on the very vague and limited information before me, I do not grant an extension for the tenant to file an application to dispute a notice.

Issues(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to an order that would suspend or set conditions on the landlords right to enter the suite/unit?

Is either party entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlords counsel made the following submissions. The fixed term tenancy began on April 15, 2019 and was scheduled to end on March 31, 2021. The monthly rent due on the first of the month is \$5800.00. The tenant paid a security deposit of \$2900.00 which the landlord still holds. Counsel submits that the tenant put stop payments on their rent cheques for the months of June, July and August. DL and VN both confirmed that stop payments were made on the rent and that no attempts have been made to pay the rent owing for August, September and October. Counsel submits that the landlord

issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 9, 2019 and that the tenants have made no attempts to remedy the situation. Counsel submits that the tenants did not file an application to dispute the notice within five days of being deemed to have received the notice and therefore its conclusively presumed that the tenants have accepted the end of tenancy and they must move out immediately as the effective date of the notice has past over two months ago.

The tenant's representative testified that the tenant would like to resolve the matter and had no intention of not paying. The representative testified that the tenant thought they had obtained a lawyer to address the matter but somehow "fell through the cracks". The representative testified that the notice is invalid, and that the tenancy should continue and that way the parties can resolve all outstanding rent.

Analysis

Section 26 of the Act confirms that a tenant must pay rent when 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 the Act to deduct all or a portion of the rent.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. Section 46(4) of the Act confirms that a tenant has five days after receipt of a notice to end tenancy to pay the overdue rent or disputed the notice by making an application for dispute resolution. Section 46(5) of the Act confirms that a failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find that the tenant did not pay the rent in full when due on August 1, 2019. In addition, the tenant did not file an application until August 21, 2019, seven days after being deemed to have received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; on August 14, 2019. I find that the tenant did not apply to dispute the notice in accordance with section 46(4) of the Act. The tenant has not paid rent for August, September and October as of this hearing.

The tenant's representative argued that the 10 Day Notice submitted for this hearing was dismissed by an Adjudicator in a previous hearing. However, the Adjudicator addressed the issue as follows:

“I find that the copy of the 10 Day Notice is of a poor quality and that I am not able to determine whether the landlord has signed the 10 Day Notice. I find I am not able to confirm whether the landlord has complied with the provisions of section 52 of the Act.

*For this reason, the landlord’s application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply. The landlord may reapply for dispute resolution with a **clearer copy of the 10 Day Notice** or issue a new 10 Day Notice to the tenant if the signature does not appear on the document.”*

I find that the landlord has submitted a clearer copy of the 10 Day Notice as allowed by the Adjudicator in the previous decision and that it fully complies with section 52 of the Act, accordingly; I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act. It is worth noting that the tenant’s representative did not dispute the fact that the tenants have not paid the rent since August.

Based on the evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord unpaid rent. Although the landlord has not applied to retain the security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit of \$2900.00 against the amount of unpaid rent.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

The tenant has not been successful in their application.

Conclusion

I issue a monetary award in the landlord’s favour as follows

| Item | Amount |
|-----------------------------|--------------------|
| Unpaid August 2019 Rent | \$5800.00 |
| Unpaid September 2019 Rent | 5800.00 |
| Unpaid October 2019Rent | 5800.00 |
| Filing Fee | 100.00 |
| Less Deposits | -2900.00 |
| | |
| Total Monetary Order | \$14,600.00 |

The landlord is granted an order of possession and a monetary order for \$14,600.00. The landlord may retain 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: October 25, 2019

Residential Tenancy Branch