



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, FFT

Introduction

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

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated October 7, 2019;
- an order for regular repairs; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served the Landlord with the Application package as well as documentary evidence by registered mail, however, could not recall the date of service. The Landlord confirmed receipt on October 9, 2019. No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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*.

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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for regular repairs is dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated October 7, 2019, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on July 1, 2017. Currently, the Tenant is required to pay rent in the amount of \$4,500.00 which is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit in the amount of \$2,250.00 which the Landlord continues to hold. Neither party provided a copy of the tenancy agreement in their documentary evidence.

The Landlord stated that the Tenant failed to pay rent in the amount of \$4,500.00 when due for October 2019. The Landlord stated that he served the Tenant with the 10 Day Notice dated October 7, 2019 with an effective vacancy date of October 18, 2019 by posting it to the Tenant's door. The Tenant confirmed receipt on October 7, 2019. The

10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice. The Landlord testified that the Tenant has not paid any amount of rent since the 10 Day Notice was served and has also failed to pay rent for the month of November 2019.

In response, the Tenant confirmed that he has not paid any amount of rent when due to the Landlord for October and November 2019. The Tenant stated that he felt justified in withholding the rent for several reasons. The Tenant stated that the Landlord has not repaired the mold issue, damaged lawn, a broken oven, broken heaters, plumbing issues, electrical issues, and a broken washer and dryer.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant 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.

In relation to the 10 Day Notice dated October 7, 2019, the Landlord stated he served the 10 Day Notice to the Tenant on October 7, 2019 by posting it to the Tenant's door on the same date. 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.

I accept that the parties agreed that the Tenant has not paid rent in the amount of \$4,500.00 for the month of October 2019 as indicated on the 10 Day Notice and that no rent has been paid to the Landlord since. As a result, I dismiss the Tenant's application to cancel the 10 Day Notice dated October 7, 2019, without leave to reapply.

Under section 55 of the Act, when a Tenant's 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 Tenant, pursuant to section 55 of the Act. This order should be served to the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was unsuccessful with the Application, I find that the Tenant is not entitled to the return of the filing fee paid to make the Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenant. 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: November 07, 2019

Residential Tenancy Branch