



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for an extension of time to dispute the 10 Day Notice, for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Two of the Tenants were present for the hearing and were affirmed to be truthful in their testimony. No one called in for the Landlord during the approximately 18 minutes that the phone line was monitored.

The Tenants stated that they served an agent of the Landlord in person with the Notice of Dispute Resolution Proceeding package and a copy of their documentary evidence on September 23, 2019; the same day that they received the notice of hearing documents from the Residential Tenancy Branch. Therefore, I accept that the Landlord was served in accordance with Section 89 of the *Act* on September 23, 2019.

The Tenants also stated that they served their photos and video evidence to the Landlord by email. However, in the absence of confirmation that the email was received and the documents were accessible, and as email is not a method of service under Section 88 of the *Act*, I find that the photo and video evidence was not sufficiently served. Therefore, the photo and video evidence of the Tenants is not accepted and will not be considered in this decision.

Preliminary Matters

The Tenants named an individual as respondent on the Application for Dispute Resolution. However, a company was named on the 10 Day Notice and on a notice of rent increase submitted into evidence. The Tenants confirmed that the company as stated on the 10 Day Notice was the current Landlord and the individual initially named was an agent for the Landlord. Therefore, pursuant to Section 64(3)(c) of the *Act*, I amend the application and cover page to name the corporate landlord instead of an individual agent.

As stated by rule 2.3 of the *Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. As such, due to the urgent matter of a notice to end tenancy, only the dispute over the 10 Day Notice will be addressed in this decision, as well as the request for an extension of time and the Tenant's request for the recovery of the filing fee. The Tenants' monetary claim is dismissed, with leave to reapply.

Issues to be Decided

Should the Tenants be granted an extension of time to dispute the 10 Day Notice?

Should the 10 Day Notice be cancelled?

If the 10 Day Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenants presented undisputed testimony on the tenancy. A tenancy agreement was submitted into evidence but appears to be in relation to another tenancy. A second partial tenancy agreement was submitted. The Tenants stated that the tenancy started in March 2017 and that rent in the amount of \$1,492.00 is due on the first day of each month. The Tenants submitted a notice of rent increase which indicates that rent was increased to \$1,492.40 as of March 1, 2019. The Tenants stated that a security deposit of \$700.00 was paid at the start of the tenancy.

The Tenants testified that they received the 10 Day Notice on or around September 8, 2019 after it was posted on their door. A copy of the 10 Day Notice was submitted into evidence and it is noted that \$1,492.00 was unpaid as due on September 1, 2019. The date of the 10 Day Notice is September 6, 2019.

The Tenants applied to dispute the 10 Day Notice on September 23, 2019. However, the Tenants applied for an extension of time to dispute the notice as they stated that they initially attempted to apply online which did not work, then sent in an application by mail before being informed that this was not accepted. The Tenants stated that they filed the application in person at the Residential Tenancy Branch on September 23, 2019.

The Tenants provided testimony that they did not pay rent for September 2019 due to repair issues in the rental unit which the Landlord had not fixed.

Analysis

I accept the testimony of the Tenants that they received the 10 Day Notice on or around September 8, 2019. As stated in Section 46(4) of the *Act*, a tenant has 5 days after receipt of a 10 Day Notice to dispute the notice or pay the outstanding rent. The Tenants filed the Application for Dispute Resolution on September 23, 2019 and applied for an extension of time to dispute the notice.

However, Section 66 of the *Act* allows a time limit to be extended in exceptional circumstances only. While the Tenants provided testimony about challenges applying for dispute resolution, I do not find sufficient evidence to support the testimony that exceptional circumstances were present and that the Tenants were unable to dispute the 10 Day Notice within the 5 days allowable or that the online submissions were not working.

Accordingly, I am not satisfied that the Tenants applied within the 5 days allowable or that exceptional circumstances existed that prevented them from doing so. Therefore, I find that they applied on September 23, 2019 which is beyond the 5 days allowable under the *Act*. The Tenants' application for an extension of time is dismissed, without leave to reapply.

Regarding the 10 Day Notice, I also accept the Tenants' testimony that they did not pay rent for September 2019. Although they presented testimony that rent was withheld due

to repairs not being completed in the rental unit, I fail to find a provision in the *Act* that would allow the Tenants to withhold the rent for this reason. I also do not find sufficient evidence to establish that the Tenants had permission from the Landlord to withhold rent for this reason. Therefore, the Tenants' application to cancel the 10 Day Notice is dismissed.

As stated in Section 55 of the *Act*, if a tenant's application to cancel a notice to end tenancy is dismissed, I must consider whether the Landlord is entitled to an Order of Possession. However, as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. In the absence of the Landlord providing testimony regarding the reasons for the notice, I find that I am not able to make a determination on the validity of the 10 Day Notice. Therefore, I decline to issue an Order of Possession.

The Landlord is at liberty to file an Application for Dispute Resolution seeking an Order of Possession should they choose.

As the Tenants were not successful with the application, I decline to award the recovery of the filing fee. The Tenants' application is dismissed, without leave to reapply.

Conclusion

The Tenants' application is dismissed, without leave to reapply. Due to the absence of the Landlord at the hearing, I decline to grant the Landlord an Order of Possession.

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 29, 2019

Residential Tenancy Branch