



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on November 6, 2019, for a monetary order for money owed or compensation under the Act, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on November 6, 2019. The tenant stated that they did not pay rent because they feel they are entitled to compensation as noted in their application. The tenant stated that they have just paid the outstanding rent and it was not paid within five days of receiving the Notice.

The landlord's agent testified that they have just received the outstanding rent and they have accepted rent for January 2020. The agent stated they are not reinstating the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application is without merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. The evidence of the tenant was that they withheld rent because they believe the landlord has breached the Act and they feel that they are entitled to compensation.

However, the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

I find the tenant has breached section 26 of the Act, when they did not pay rent for November 2019. The tenant did not pay the outstanding rent until January 2020, which was not within five days of receiving the Notice. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

I have dismissed the tenant's application, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act. Since the landlord has accepted rent for January 2020, I find it appropriate to extend the effective date in the Notice to January 31, 2020 pursuant to section 66 of the Act.

I find that the landlord is entitled to an order of possession, effective **January 31, 2020**. 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.

Conclusion

The tenant's application is dismissed. The landlord is granted 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: January 13, 2020

Residential Tenancy Branch