



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- More time to file their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") pursuant to section 66;
- Cancellation of the 10 Day Notice pursuant to section 46; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they had been served with the materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the tenant be granted more time to file their application?

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The parties testified that this periodic tenancy began in either December 2017 or January 2018. The rental unit is a basement suite in a detached home. The landlord occupies the other portion of the building. The monthly rent was \$500.00 and raised to \$800.00 as of January 2019 and is payable on the first of each month. The tenant is also responsible for paying half of the utilities for the building. There is no written tenancy agreement. No condition inspection report was prepared at the start of the tenancy and no deposit was collected.

The landlord submits that the tenant failed to pay rent for August 2018 and September 2018 and February 2019 and only made partial payment of \$500.00 for March 2019. The landlord testified that there was a rental arrear of \$2,100.00 as at October 22, 2019, the date of the 10 Day Notice. The landlord issued the 10 Day Notice with a typographic error indicating a rental arrear of \$2,600.00. The landlord also noted on the 10 Day Notice that there was a utility arrear of \$364.82.

The tenant confirmed receipt of the October 22, 2019 notice on or about that date and testified that they did not file an application to dispute the notice within the statutory deadline as they attempted to resolve the issue directly with the landlord. The tenant testified that they filed their application after failed attempts to resolve the issue. The tenant submits that there was no arrear for this tenancy and no basis for the 10 Day Notice to have been issued.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within 5 days of receiving a 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on or about October 22, 2019 and did not file an application to dispute the notice until November 18, 2019, well after the 5-day limit under the *Act*.

I find that the tenant's explanation of the reasons why they did not file within the statutory deadlines and an extension of a time limit is required to not meet the definition of an exceptional circumstance. The ongoing negotiation with the landlord could be conducted at the same time as filing an application to dispute the 10 Day Notice. The documentary evidence submitted by the parties, consisting of text conversations, shows that the landlord was not open to negotiating.

Furthermore, the landlord did not make any representation by either words or conduct that they were waiving their right to pursue an order of possession or that the tenant was not required to file an application if they wished to dispute the 10 Day Notice. Based on the totality of the evidence before me, I find that there were no exceptional circumstances that would give rise to an extension of time for the tenant to file their application to dispute the 10 Day Notice of October 22, 2019.

I find that the tenant has failed to file an application for dispute resolution within the 5 days of service granted under section 46(4) of the *Act*. Accordingly, I dismiss the tenant's application to dispute the 10 Day Notice.

Section 55 of the *Act* provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

While I have dismissed the tenant's application to dispute the 10 Day Notice, I am not satisfied with the landlord's evidence that the notice meets the content requirements of the *Act*. The notice is signed and dated, provides the address of the rental unit and states the reason for the tenancy to end.

However, based on the testimonies of the parties I am not satisfied that there is an arrear for this tenancy that would give rise to the issuance of a valid 10 Day Notice. The landlord claims that the tenant has failed to pay full rent in the summer of 2018 and again during February and March of 2019. The landlord testified that the amount of the rental arrear indicated on the 10 Day Notice is incorrect. There is some reference to late rent in the correspondence between the parties but the mentions are brief and without sufficient details to support the landlord's testimony. The landlord gave weak

testimony at the hearing, contradicting themselves as to which months the rent was unpaid and confirmed that no receipts were issued for rent payments made prior to July 2019 and no ledger was kept. Based on the paucity of evidence I am not satisfied that there was a rental arrear in the amount claimed by the landlord or at all that would give rise to the issuance of a 10 Day Notice. Consequently, as I am not satisfied that the 10 Day Notice meets the content requirements of the Act, I decline to issue an Order of Possession.

Conclusion

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: January 16, 2020

Residential Tenancy Branch