



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 23, 2019 (the "Application"). The Tenants 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 November 19, 2019.

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

The Tenants testified that they served the Landlord in person with the Application package on December 2, 2019. The Landlord confirmed receipt. Accordingly, pursuant to section 89 of the *Act*, I find the above Application was sufficiently served for the purposes of the *Act*. The parties agreed that the Tenants did not serve a copy of their documentary evidence to the Landlord. The Tenants stated that their documentary evidence consists of documents which were served to them by the Landlord, therefore he should have a copy.

Preliminary and Procedural Matters

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

I accept that the parties agreed that the Tenants did not served the Landlord with a copy of their documentary evidence. The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. As the Tenants did not serve their documentary evidence to the Landlord, I find that it will not be considered; therefore, the only evidence I will consider from the Tenants is their oral testimony during the hearing.

The Landlord stated that he served a copy of his documentary evidence to the Tenants in person on January 9, 2019. The Tenants confirmed receipt. Accordingly, pursuant to section 88 of the *Act*, I find the above documents were sufficiently served for the purposes of 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice dated November 19, 2019, pursuant to Section 46 of the *Act*?
2. If the Tenants are 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 August 1, 2014. Currently, rent in the amount of \$1,650.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 which is currently being held by the Landlord. The Tenants continue to occupy the rental unit.

The Landlord stated that the Tenants failed to pay rent when due to the Landlord for November 2019 and had a previous outstanding balance owing, for a total monetary owing in the amount of \$2,923.00. The Landlord stated that he subsequently served the Tenants in person with the 10 Day Notice dated November 19, 2019 with an effective vacancy date of November 29, 2019.

The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$2,923.00 which was due to be paid to the Landlord on November 1, 2019. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice.

The Tenants confirmed having received the 10 Day Notice on November 19, 2019 and disputed the 10 Day Notice within the appropriate timelines. The Tenants confirmed that they had an outstanding balance owing to the Landlord in the amount of \$2,923.00.

The parties agreed that the Tenants repaid the outstanding balance as indicated on the 10 Day Notice in three installments. According to both parties, the Tenants paid \$1,000.00 to the Landlord on November 12, 2019, \$1,000.00 on November 28, 2019 and \$923.00 on November 29, 2019.

The Landlord stated that he is seeking to end the tenancy as a result of the Tenants paying late. The parties agreed that the Tenants have not yet paid rent to the Landlord for January 2020.

Analysis

Based on the evidence before me, the testimony of the parties, 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. Therefore, the Tenants had until November 24, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that the Tenants paid the outstanding balance owed to the Landlord in three payments, the last payment taking place on November 29, 2019. In this case, I find that the Tenants failed to pay the full amount owing to the Landlord as indicated on the 10 Day Notice, by November 24, 2019. As such, I dismiss their Application to cancel the 10 Day Notice without leave to reapply.

Under section 55 of the Act, when a Tenants' 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 as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession. As the parties agreed that the Tenants have failed to pay rent to the Landlord for the month of January 2020, I find that the Landlord is entitled on an order of possession that is effective 2 (two) days after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. 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: January 21, 2020

Residential Tenancy Branch