



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on December 6, 2019, in which the Tenants sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 2, 2019 (the "Notice").

The matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord and her sons, F.B. and R.B.

The Tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and her sons and I were the only ones who had called into this teleconference.

Analysis and Conclusion

The Landlord's son, F.B., testified as follows. He confirmed the tenancy began July 1, 2019. Monthly rent was payable in the amount of \$925.00; the Tenants were given a \$50.00 per month credit for clearing snow and mowing the lawn such that they were obligated to pay \$875.00 on the first of each month. This was confirmed in the tenancy agreement which was also provided in evidence.

The Tenants failed to pay rent on December 1, 2019 following which the Landlord issued the Notice. The Tenants applied to dispute the Notice on December 6, 2019. F.B. testified that the Tenants then paid the December 2019 rent on December 20,

2019. The Landlord issued a receipt for “use and occupancy only” such that she did not reinstate the tenancy.

F.B. further testified that although the Tenants paid the January 2020 rent early, the Landlord again issued a “use and occupancy only” receipt. The Tenants only paid one half of the February 2020 rent.

On their Application for Dispute Resolution the Tenants concede they did not pay the December rent when due, as they did not have the funds to do so, having lent money to a family member.

A Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

Financial hardship does not give a tenant the right to withhold rent. In the case before me I find the Tenants had no legal authority to withhold rent. Consequently, I find that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord’s testimony that they personally served the Notice on the Tenants on December 2, 2019.

Although the Tenants applied to dispute the Notice within the five days required, they failed to call into the hearing. Similarly, although the Tenants paid the December rent on December 20, this was well past the five days permitted by the Notice.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenants did not attend the hearing, and the Respondent Landlord appeared and was ready to proceed, I dismiss the Tenants' claim without leave to reapply. This includes dismissing their request that I cancel the Notice. As such, the tenancy shall end in accordance with the Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

Order of possession for the landlord

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. I am also satisfied, based on F.B.'s testimony, that the Landlord has grounds to end the tenancy. Consequently, and as I have dismissed the Tenants' claim, the Landlord is entitled to an Order of Possession effective two days after service.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 03, 2020

Residential Tenancy Branch