



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNR, OLC, RR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 19, 2020 (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 January 17, 2020;
- an order to restrict or suspend the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement, or regulations; and
- an order granting a rent reduction.

The Tenants, the Tenants' witness M.P. and the Landlord G.S. attended the hearing at the appointed date and time.

The Tenants testified that they served the Landlords with the Application package as well as documentary evidence by registered mail on January 23, 2020. The Landlord confirmed receipt. Accordingly, pursuant to sections 88 and 89 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 (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*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenants' request for an order to restrict or suspend the Landlord's right to enter, an order that the Landlord comply, and an order granting a rent reduction are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice dated January 17, 2020 pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on August 1, 2018, however, the Tenants moved in mid August 2018. Currently, rent in the amount of \$1,800.00 is due to be paid to the Landlords on the 15th day of each month. A security deposit in the amount of \$900.00 was paid to the Landlords. The Tenants provided a copy of the tenancy agreement in support.

The Landlord testified that the Tenants failed to pay rent in the amount of \$1,800.00 for January 2020. The Landlord stated that he subsequently served the Tenants in person with the 10 Day Notice on January 17, 2020 with an effective vacancy date of January 27, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$1,800.00 which was due on January 15, 2020. 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 notice on January 17, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord testified that the Tenants have not paid any amount of outstanding rent to the Landlord in relation to the 10 Day Notice. Furthermore, the Landlord stated that the Tenants have also failed to pay rent for February and March 2020. The Landlord stated

that currently, the Tenants have an outstanding balance of rent owing in the amount of \$5,400.00.

In response, the Tenants stated that they had an agreement with the Landlords that the Tenants would have the utilities in their name and collect 40 percent of the utility bills from the downstairs occupants. The Tenants stated that they have not received payments from the other occupants from September 2019 to March 2020. The Tenants did not provide an amount for which they are owed. The Tenants stated that the Landlord is seeking rent, but they are seeking payment for the bills. As such, they have withheld paying their rent to the Landlord for January, February and March 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 Tenants 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.

In relation to the 10 Day Notice dated January 17, 2020 the Landlord served the 10 Day Notice in person, to the Tenants on January 17, 2020. The Tenants acknowledged receipt on this date and in this manner. Therefore, pursuant to section 88 of the Act, I find the above document was sufficiently served for the purposes of the Act.

I accept that the parties agreed that the Tenants have failed to pay rent to the Landlord when due for January 2020 according to the 10 Day Notice. Furthermore, the parties agreed that the Tenants also failed to pay rent for February and March 2020. During the hearing, the Tenants testified that they felt entitled to retaining the rent until they received payment toward the 40 percent of the utilities bills as agreed upon. I find that the Tenants provided insufficient evidence to support that the amount owed to them in unpaid utility bills is equal to the amount of unpaid rent as indicated on the 10 Day Notice.

As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and that they have provided insufficient evidence to support that they where

entitled to retain the full amount of rent owed to the Landlords, I therefore dismiss their Application to cancel the 10 Day Notice without leave to reapply.

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 Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, 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 Tenants.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlords are 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: March 23, 2020

Residential Tenancy Branch