



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR

Introduction

This hearing was convened by way of conference call. The Landlords filed an Application for Dispute Resolution on January 08, 2020 (the "Application"). The Landlords applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 13, 2019 (the "Notice"). The Landlords sought reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing.

At the outset, the Tenant said they think the rental unit address is as on the written tenancy agreement. This was not the same address as on the Application. The Landlord said the address on the tenancy agreement was a mistake and should be as on the Application. Later in the hearing, the Landlord agreed the rental unit address is actually as shown on the written tenancy agreement and is not the address shown on the Application. I have included the correct rental unit address, as agreed to by both parties, on the front page of this decision.

I explained the hearing process to the parties. The Tenant asked why they cannot record the hearing and said they were recording the hearing. I explained that the Rules of Procedure govern these proceedings and read out rule 6.11 which states:

6.11 Recording prohibited

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

I explained that rule 6.12 relates to having a court reporter attend the hearing.

The parties provided affirmed testimony. Once the Tenant was affirmed, the Tenant confirmed they had turned off all recording devices at that point.

The Landlord submitted the Notice and a written tenancy agreement as evidence for the hearing. The Tenant had not submitted evidence. The Tenant confirmed receipt of the hearing package and stated that they had received the Notice and written tenancy agreement previously.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started December 01, 2019 and is for a fixed term ending April 01, 2020. Rent is \$1,100.00 per month. The parties agreed rent is due on the first day of each month. The Tenant paid a security deposit of \$500.00. The written agreement submitted is not signed by the parties. The parties agreed the tenancy agreement is accurate although the Landlord testified that the rental unit address is wrong.

The Landlords submitted a copy of the Notice. It states that the Tenant failed to pay \$1,000.00 in rent due December 01, 2019. It states the Tenant failed to pay utilities in the amount of \$100.00 following a written demand on December 01, 2019. It includes the same address that was on the original Application as the rental unit address. The box for the Landlords' names is blank. It states that the Tenant must vacate the rental unit address that was noted on the original Application. The Notice submitted is not signed or dated by the Landlords or an agent.

The Landlord testified that the rent amount on the Notice should be \$1,100.00 and the \$1,000.00 was a mistake. I understood the Landlord to think that rent is \$1,000.00 and utilities are \$100.00 per month despite the tenancy agreement stating rent is \$1,100.00 per month and includes utilities.

The Landlord acknowledged he did not give the Tenant a written demand for \$100.00 for utilities.

The Landlord testified that he served the Notice on the Tenant in person December 13, 2019. The Tenant acknowledged receiving the Notice around December 13, 2019 in person.

The Landlord testified that the Tenant did not pay December rent. The Landlord testified that the Tenant has not paid any rent since being issued the Notice.

The Tenant agreed December rent was not paid. The Tenant testified that they gave their rent money to a friend to deliver to the Landlords and the friend spent the money instead. The Tenant testified that they then won some money and told the Landlord's wife to let the Landlord know they had money to pay rent. The Tenant did not say the Landlords refused to accept rent. The Tenant said they did not meet up with the Landlord to pay rent after initially telling the Landlord or Landlord's wife that they won money and wanted to pay rent. The Tenant acknowledged they have not paid rent since being issued the Notice.

The Tenant acknowledged they did not dispute the Notice.

In reply, the Landlord testified that his wife would have told him if the Tenant had tried to pay rent or told his wife that the Tenant had money to pay rent. The Landlord testified that the Tenant won money prior to being issued the Notice.

It was at this point in the testimony that the Landlord said he had made a mistake about the rental unit address earlier and that the rental unit address is as shown on the written tenancy agreement.

I raised with the Landlord that the rental unit address on the Notice is therefore wrong. The Landlord testified that the Notice served on the Tenant included the correct address being the address on the written tenancy agreement. The Tenant had the Notice in front of them and testified that the rental unit address is as shown on the original Application and not as shown on the written tenancy agreement. The Tenant acknowledged that their copy of the Notice is signed and dated by the Landlord.

Analysis

The Notice was issued under section 46 of the *Residential Tenancy Act* (the “Act”). Section 46(2) of the *Act* states:

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- ... and
- (e) when given by a landlord, be in the approved form.

(emphasis added)

I accept the testimony of the Tenant that the Notice they received includes the original address as on the Application as the rental unit address and not the address on the written tenancy agreement. This accords with the copy of the Notice submitted as evidence and before me. The Landlord stated numerous times during the hearing that the rental unit address is as on the original Application and that the address on the written tenancy agreement is wrong. Further, the Landlord put the wrong address on the Application. I find it unlikely that the Landlords would have included the correct rental unit address on the Notice in the circumstances.

I accept the testimony of the Tenant that their copy of the Notice is signed and dated. The copy of the Notice submitted in evidence is not; however, I find the Tenant's

testimony on this point reliable and credible given the Tenant had the Notice in front of them and given this admission is favourable to the Landlords and not to the Tenant.

Given the testimony of the Landlord, testimony of the Tenant and written tenancy agreement, I find the following errors on the Notice.

The rent amount is wrong and should state \$1,100.00 rather than \$1,000.00.

The portion regarding utilities is wrong. Utilities are included in rent according to the written tenancy agreement in evidence, which the parties agreed is accurate. The Landlords did not issue the Tenant a written demand as claimed on the Notice.

The Tenant's address is wrong.

The Notice is not complete as it is blank under "From the Landlord". I note that the "Landlord Address" is the rental unit address without the unit number.

The Notice states that the Tenant has to vacate the wrong address.

Given the above noted errors, I am not satisfied the Notice complies with section 52 of the *Act*. Notices to end tenancy are important documents in a tenancy. The RTB provides forms which clearly set out what landlords are expected to complete on the form. Landlords are expected to complete the forms correctly. Here, the Notice includes five errors. Most importantly, the Notice includes the wrong address for the Tenant and states that the Tenant must vacate an address that is not the rental unit address. I am not satisfied the Landlords have complied with section 46(2) of the *Act*.

Given the above, I am not satisfied the Notice is a valid notice to end tenancy and I therefore decline to issue the Landlords an Order of Possession based on it under section 55 of the *Act*.

I do note that, if any rent is outstanding as of the date of this decision, it is open to the Landlords to issue the Tenant another notice to end tenancy under section 46 of the *Act*. If the Landlords do so, the Landlords need to ensure the form is completed correctly. Further, it is open to the Landlords to file an Application for Dispute Resolution seeking a Monetary Order for unpaid rent.

The Application is dismissed without leave to re-apply. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is dismissed without leave to re-apply. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 11, 2020

Residential Tenancy Branch