



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

In this dispute, the tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”), and he also sought recovery of the filing fee pursuant to section 72 of the Act.

It should be noted that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

The tenant applied for dispute resolution on February 19, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 9, 2020. The tenant and the landlord’s representative attended the hearing, were given a full opportunity to be heard, present affirmed testimony, make submissions, and to call witnesses. There were no issues of service raised by the parties.

I note that neither party submitted any documentary evidence, and as such I will only consider the relevant, oral testimony given by the parties during the hearing.

Issues

1. Is the tenant entitled to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The facts of this dispute are relatively undisputed: the tenancy began in January 2018, it was renewed in February 2020, and monthly rent is \$2,559.00.

In April 2018, the tenant's wife left him, and took the family pet. The tenant is looking after his four children, and has struggled paying rent on time, which is due on the first of the month. Recently, he lost his job due to the pandemic. The landlord has issued four 10 Day Notices to End Tenancy for Unpaid Rent over the past four months because the tenant does not pay rent on the first. Instead, partly because his "baby cheques" do not arrive until the 20th of each month, it is later in the month that he ends up paying rent.

In this dispute, the landlord issued the Notice in question on February 14, 2020 for unpaid rent of \$2,559.00 due on February 1, 2020. An employee ("H.D.") of the landlord served the Notice by posting it on the door. On February 27, the tenant paid up the rent in full. The landlord testified that the tenant paid rent for March 2020, and that he has likely paid rent for April 2020 (she noted that she did not have an up-to-date ledger, but that she would have been notified if rent was late; she has received no notification).

The tenant submitted that it is not that he has not been paying rent, but rather, that due to the loss of his job and the timing of the cheques, he has had difficulty in paying on time. He added that, if the landlord had problems with this and wanted him and his family "out on the street," why would the landlord renew the tenancy in February?

The landlord submitted that rent is due on the first, as per the tenancy agreement, and that the landlord is obligated to issue notices for unpaid rent if rent is not paid on time. She noted that it is an "automatic procedure."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In cases where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove the ground on which the notice was issued.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of

the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the tenant would be cancelled if he paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution, which he did.

The landlord testified that the tenant did not pay the rent on time, and thus the Notice was issued. The tenant did not dispute that he failed to pay rent on time. On this basis alone, I find that the landlord has established the ground on which the Notice was issued. As such, I dismiss the tenant's application to cancel the Notice.

Section 55(1) of the Act states 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

(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.

While a copy of the Notice was not submitted into evidence by either party, the parties provided sufficient confirmation that the information required to be on the Notice as per section 52 was included on the Notice. Based on that information provide, I conclude that the Notice complies with section 52. Briefly, section 52 of the Act reads as follows:

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,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Having dismissed the tenant's application and also having found that the Notice complies with section 52 of the Act, I grant the landlord an order of possession.

As for the tenant's application to recover the application filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. In this case, as the tenant was unsuccessful in his application, I decline to award recovery of the fee.

Conclusion

The application is dismissed, and the landlord is granted an order of possession.

It should be noted, however, that most orders of possession (with the exception of those issued under sections 56 or 56.1 of the Act) are not enforceable in court during the current provincial state of emergency, as per Ministerial Order No. M089, [*Residential Tenancy \(COVID-19\) Order*](#), MO 73/2020.

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: April 9, 2020

Residential Tenancy Branch