



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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”). He also sought recovery of the filing fee pursuant to section 72 of the Act. I note 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 14, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 14, 2020. Both parties attended the hearing and were given a full opportunity to be heard, to present testimony and to make submissions. While there were issues of service of documentary evidence, the evidence (which consisted of letters authored by third parties) is, I find, not relevant to the issues of this dispute.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties’ testimony may necessarily reproduced below.

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 \$100.00 filing fee?

Background and Evidence

The landlord testified that the tenancy began in 2016, and that monthly rent, which is \$1,500.00, is due on the 7th of the month. The tenant paid a security deposit of \$750.00. A copy of the written tenancy agreement was submitted into evidence.

On or about February 10, 2020, an individual ("R.S.") acting on the landlord's behalf served the tenant in-person with the Notice. The Notice, a copy of which was tendered into evidence, indicates that rent in the amount of \$1,500.00 was due on February 1, 2020. On the Notice, it also indicated that the tenancy would end on February 21, 2020 if the tenant did not pay the rent within five day or file for dispute resolution. The landlord explained that he had made a small error on the Notice, and that the rent due date ought to have read February 7, 2020.

On February 25, 2020, the landlord served the tenant with a new, corrected 10 Day Notice to End Tenancy for Unpaid Rent, and which is subject to a separate, pending file by the landlord. A copy of the second notice was not submitted into evidence.

According to the landlord, the tenant has not paid rent for February, March and April 2020.

The tenant's testimony was largely confined to an issue about rent increases. However, given that the dispute before me is solely concerned with the Notice, I will not consider an alleged rent increase matter further. Any such disputes concerning a rent increase would need to be subject to a separate application by the tenant.

The tenant testified that he offered the landlord the full rent on February 14, 2020, but that the landlord refused to accept the \$1,500.00. He also testified that he had a conversation with the building manager about him being late on the rent, due to the timing of his disability cheques. The tenant further testified that he would "not give [the landlord] one red cent" until this entire matter is straightened out.

In rebuttal, the landlord testified that he never heard from the tenant about paying the rent, and that the tenant's story is "made up." He reiterated that the tenant did not pay rent when it was due and that he has not paid rent in three months. He confirmed that rent is \$1,500.00.

In his rebuttal, the tenant testified that "this isn't about the \$1,500" but that it was about an illegal rent increase. He added that he has "never ever ever been late" with the rent.

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.

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 Notice 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, and provided documentary evidence to support their submission (by way of the Notice), that the tenant did not pay rent when it was due on February 7, 2020, and that he has also not paid rent for March and April 2020. The tenant did not dispute that he has not paid rent for three months and will not pay any rent until this matter is resolved.

There is no legal right under the Act for the tenant to stop paying rent because of a pending dispute before the Residential Tenancy Branch. Moreover, while the rent due date on the Notice was in error, that the Notice was served on February 10 and gave the tenant until February 21 (at which point the tenancy would end if rent was not received or if the tenant disputed the Notice) is, I conclude, a clear notice to the tenant that he had not paid rent on the 7th. Moreover, while the tenant testified at length about a supposed rent increase, the Notice is unambiguous that rent is \$1,500.00. Finally, that the tenant did not dispute that he has not paid rent since February 2020 is, I find, an admission that he did not pay rent as required by section 26 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. As such, the tenant's application to cancel the Notice is dismissed.

Section 55(1) of the Act states the following:

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.

In this case, I have dismissed the tenant's application.

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 found that the Notice complies with section 52 of the Act, I grant the landlord an order of possession.

Finally, 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. As the tenant was unsuccessful, I dismiss his claim for reimbursement of the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service.

It should be noted, however, that most orders of possession (with the exception of those issued under sections 56 and 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 14, 2020

Residential Tenancy Branch