



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

The tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on February 21, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 23, 2020. The landlord attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend. The landlord testified that he was served with the Notice of Dispute Resolution Proceeding package shortly after February 21, 2020. Neither party submitted any documentary evidence, and as such, this decision is based solely on the oral testimony of the landlord.

I further 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.

Issues

1. Is the tenant entitled to an order cancelling the 10 Day Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that the tenancy began on October 1, 2012 and monthly rent, which is due on the first of the month, is \$750.00. Rent includes hydro. There is no security or pet damage deposit.

On February 13, 2020, the landlord served the 10 Day Notice on the tenant by attaching it to the door, which is in compliance with section 88(g) of the Act. He also added that a copy of the 10 Day Notice was also sent to the tenant by way of Canada Post registered mail; a copy of the tracking number was provided to me during the hearing, and which indicated that the tenant picked up the notice on February 17, 2020.

The landlord had a copy of the 10 Day Notice with him, and he provided the following information that was on the 10 Day Notice: (1) monthly rent in the amount of \$4,425.00 was due on February 1, 2020, and which included unpaid rent since October 1, 2019; (2) the full name of the tenant and of the landlord; (3) that the tenant had ten days to either pay the outstanding rent or file for dispute resolution. The tenant has, according to the landlord, not paid any of the rent, nor has the tenant answered his door or answered the phone.

The landlord explained that he had recently been diagnosed with cancer, that he does not have much time left, and needs to have the property eventually put into his estate.

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 this type of dispute, the onus is on the landlord to establish the ground on which the 10 Day Notice was given.

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 10 Day Notice informed the tenant that the 10 Day Notice would be cancelled if he paid rent within five days of service. The 10 Day Notice also explains 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 has not paid rent since October 2019. There is no evidence before me that the tenant had any right under the Act to not pay the rent.

Taking into consideration all the undisputed oral 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 10 Day Notice was given. As the landlord has met the onus of proving the ground on which he issued the 10 Day Notice, I dismiss the tenant's application. The 10 Day Notice is therefore upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and, be in the approved form. I find that, based on the testimony given to me by the landlord, that the 10 Day Notice issued by the landlord on February 13, 2020 complies with section 52.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application is dismissed, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act. As such, I grant the landlord an order of possession.

It should be noted that most orders of possession (with the exception of those under sections 56 and 56.1 of the Act) are not enforceable by court bailiffs during the state of emergency, as per Ministerial Order No. M089, [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020. Notwithstanding, the tenants is expected to comply with the order.

Should the tenant fail to comply with the order of possession, and should the landlord be unable to have the order enforced in court during the state of emergency, the landlord may have recourse under section 56(2) of the Act.

Conclusion

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

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

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 23, 2020

Residential Tenancy Branch