



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for the cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46.

The landlord attended the hearing. Tenant FF appeared on behalf of both tenants. Each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed that they were served with the other's documentary evidence.

Issues to be Decided

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 1, 2019. Monthly rent is \$2,050 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,050 plus a \$275 key fob deposit. The landlord still retains these deposits.

The landlord testified that the tenants were late paying her December 2019 rent (which was paid off by the end of December 2019) and January 2020 rent. He testified that he served the tenants with the Notice on January 28, 2020, by posting it on the door of the rent unit. He testified that the tenants did not pay the full balance of January 2020 rent until February 5, 2020.

The landlord also testified that the tenants did not pay the balance of the February 2020 rent until March 4, 2020. He testified that the tenants have not fully paid March 2020 or April 2020 rent, and that they are current \$3,500 in arrears.

The landlord has not issued any notices to end tenancy in relation to these late payment or non-payments of rent.

FF agreed with the dates and amounts of rent payments set out above. She testified that she was laid off in December 2019, which accounted for the late payment of December and January rent. She then testified that she regained employment but was then immediately laid off due to the global COVID-19 pandemic. She testified that she has applied for the financial assistance programs put in place by the federal and provincial government, is currently looking for a new job, and intends to fully pay back the rental arrears owed. She sought to have the Notice cancelled on compassionate grounds.

The landlord argued that the circumstances listed by FF are not valid reasons for her not to pay the rent, and that the only relevant factors I should consider when making my determination is if rent was paid on time or not.

Analysis

The landlord was correct that “compassionate grounds” are not a basis to cancel the Notice under the Act. However, he was incorrect in suggesting that the only factor I must look at is whether rent was paid on time or not. I must also consider the timing of the late payment in relation to the date of service of the Notice.

Section 46 states:

Landlord's notice: non-payment of rent

46 (1) 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.

[...]

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

As such, if the tenants repaid the rental arrears within five days of receiving the Notice, then the Notice is cancelled. If it is not, then the tenants are conclusively presumed to have accepted that the tenancy has ended, and I must issue an order of possession in favour of the landlord.

Based on the testimony of the parties, I find that the Notice was served on the tenants by posting it to the door of the rental unit on January 28, 2020.

Section 90 of the Act states:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

[...]

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

As such, I find that the Notice is deemed served on the tenants on January 31, 2020 (three days after it was posted on the door of the rental unit).

Based on the testimony of the landlord, I find that the tenants paid the full amount of January 2020 rent on February 5, 2020. The date of this repayment is within five days of being deemed served with the Notice. Accordingly, the tenants complied with their obligation under section 46(4). As such, they are not conclusively presumed to have accepted that the tenancy ended, as set out at section 46(5).

Accordingly, I cancel the Notice. It is of no force and effect. The tenancy shall continue.

I note that, by FF's own admission, the tenants were late in paying February 2020 rent, and have not fully paid March or April 2020 rent. Such late or non-payments are not relevant to my evaluation of the validity of the Notice. I can only look at the arrears as they were at the time the Notice was issued. As no further notices to end tenancy were issued in relation to February, March, or April 2020 late or non-payments of rent, they are not relevant to this application (although they may be relevant to some future of application).

Conclusion

The tenants are successful in their application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

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: April 6, 2020

Residential Tenancy Branch