



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 16, 2020 ("10 Day Notice"), pursuant to section 66; and
- cancellation of the landlords' 10 Day Notice, pursuant to section 46.

While the two respondent landlords, female landlord ("landlord") and "male landlord," attended the hearing by way of conference call, the applicant tenant did not, although I waited until 10:01 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only people who called into this teleconference.

The landlord stated that the landlords did not receive the tenant's application for dispute resolution hearing package. She said that they found out about the hearing from the Residential Tenancy Branch ("RTB").

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

During the hearing, I informed the landlords that pursuant to section 55 of the *Act*, if I dismissed the tenant's application to cancel a 10 Day Notice, the landlords were entitled to an order of possession if the notice met the requirements of section 52 of the *Act*.

The landlords confirmed that they wanted to proceed with the hearing, despite not receiving a copy of the tenant's application, as they wanted to obtain an order of possession against the tenant.

The male landlord testified that he served the tenant with the landlords' 10 Day Notice on March 16, 2020, by way of posting to her rental unit door. The 10 Day Notice indicates an effective move-out date of March 30, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on March 19, 2020, three days after its posting. In her application, the tenant stated that she received the landlords' 10 Day Notice on March 16, 2020, by way of posting to her rental unit door.

Issue to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on February 15, 2018. A written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$1,076.25 is payable on the 15th day of each month. Rent of \$1,075.00 was accepted by the landlords, instead of the \$1,076.25. A security deposit of \$525.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was issued a 10 Day Notice for unpaid rent of \$1,076.25 due on March 15, 2020. She said that the tenant made rent payments for March and April 2020 late on the following dates: \$550.00 on March 20, 2020, \$1,500.00 on April 7, 2020, and \$150.00 on April 9, 2020. She maintained that the tenant asked for paper receipts after paying by e-transfer, the landlords had only given receipts for cash payments, she was busy having a baby in the hospital recently, and the male landlord issued rent receipts with the wrong dates. The tenant provided copies

of two rent receipts, indicating that the March 2020 rent of \$1,075.00 was paid on March 15, 2020, and April 2020 rent of \$1,075.00 was paid on April 15, 2020. The landlord confirmed that the above rent receipts were issued to the tenant stating that full rent payments were made on time but this information was not correct, as it was done in a rush. She maintained that no rent receipts or other information was issued to the tenant indicating “use and occupancy only” or “not reinstating tenancy.” She maintained that the tenant knew about the landlords’ 10 Day Notice, so she was aware the landlords were still pursuing an end to her tenancy.

Analysis

Section 46(1) of the *Act* allows the landlords to issue a 10 Day Notice only after rent is unpaid and section 52(d) of the *Act* requires the landlords to state on a notice to end tenancy, the reason for issuing the notice. The landlords indicated that \$1,076.25 in rent was due on March 15, 2020 but confirmed that they were willing to accept less rent of \$1,075.00 from the tenant, which they received. As such, I find that the tenant did not have proper notice of the correct amount of rent due on March 15, 2020, as she paid less rent and the landlords accepted less rent. I find that the 10 Day Notice does not comply with section 52 of the *Act* by stating the incorrect amount of rent due.

Residential Tenancy Policy Guideline 11 discusses waiver, in part (my emphasis added):

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

*For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. **However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.***

Intent may also be established by evidence as to:

- *whether the landlord specifically informed the tenant that the money would be for use and occupancy only;*
- *whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and*
- *the conduct of the parties.*

The landlords accepted the tenant's rent payments for March and April 2020 rent, after the effective date of the notice of March 30, 2020. The landlords did not issue rent receipts for "use and occupancy only," to tell the tenant that the tenancy was not reinstated.

The landlords issued rent receipts indicating that the full rent of \$1,075.00 was paid on time each month on March 15, 2020 and April 15, 2020. I find that the landlords did not provide sufficient documentary or testimonial evidence to show that the tenant's tenancy was not reinstated or that they were pursuing an end to this tenancy. Therefore, I find that the landlords waived their right to pursue the 10 Day Notice.

Accordingly, I find that the landlords' 10 Day Notice, dated March 15, 2020, is cancelled and of no force or effect. The landlords are not entitled to an order of possession. This tenancy will continue until it is ended in accordance with the *Act*.

Conclusion

The tenants' entire application is dismissed without leave to reapply. The landlords' 10 Day Notice, dated March 15, 2020, is cancelled and of no force or effect. The landlords are not entitled to an order of possession. This tenancy continues until it is 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 *Residential Tenancy Act*.

Dated: May 22, 2020