



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNR

Introduction

In this dispute, the tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 46 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on March 27, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 21, 2020. The tenant and the landlord’s agent (hereafter the “landlord”) attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

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 be reproduced.

Further, 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.

Issues

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

Background and Evidence

The landlord testified that the tenancy began in 2016 and that the current monthly rent is \$3,400.00. Rent is due on the 15th of the month. The first page of the written tenancy agreement (which only showed the names of the parties) was submitted into evidence.

Regarding the Notice, the landlord testified that it was served on the tenant, by posting a copy of the Notice on the door, on March 23, 2020. The Notice, a copy of which was submitted into evidence, indicates that no rent was paid on March 15, 2020, and that the tenant had five days to either pay the rent or file for dispute resolution. Otherwise, the tenancy would end on March 30, 2020. (I note that, as the Notice was served on March 23, 2020, the tenancy would in fact end ten days after that.)

Finally, the landlord testified that the tenant has paid \$4,000.00 since the Notice was issued, in two separate portions of \$2,000.00 each.

The tenant testified that his work has been completely shut down and closed due to the pandemic, and that unfortunately he has had to rely on government financial relief since then. He acknowledged that he did not pay rent on March 15, 2020, and that he is simply unable to pay all of it because of the pandemic-related closure of business.

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.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

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 they paid rent within five days of service. The 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 tenant does not dispute that he did not pay rent, and that he owes rent. There is no evidence before me that the tenant had, or has, a right under the Act to deduct some or all of the rent. Thus, 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. Likewise, I dismiss the tenant's application.

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.

Section 52 of the Act states that

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, [and]
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act. Having dismissed the tenant's application, I grant the landlord an order of possession. This order is issued in conjunction with this decision.

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

This is not to say, however, that the order of possession will expire, and it may be executed (by filing in Supreme Court) after the state of emergency has lifted. Further, and I rarely express this in my decisions, but I very much empathize with both parties: the tenant is out of work through no fault of his own, and the landlord is out of rent, also through no fault of their own. I encourage the parties to continue to strive to find an economically viable solution during these difficult times.

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.

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: May 21, 2020

Residential Tenancy Branch