



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the Residential Tenancy Act, (the "Act"), to enforce a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) served on March 7, 2020, and to recover the filing fee for this application. The matter was set for conference call.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision

Issues to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The agreed upon testimony of both parties confirmed that the tenancy began on January 8, 2020. That rent in the amount of \$2,200.00 was due by the fourth day of each month. The Tenant paid the Landlord a \$1,100.00 security deposit and a \$700.00 pet damage deposit at the beginning of the tenancy. The Landlord submitted a copy of the Tenancy agreement into documentary evidence.

Both the Tenant and the Landlord agreed that the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was personally served to the Tenants on March 7, 2020, listing an outstanding rent amount of \$21,200.00 at the time of service. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the tenancy agreement had required the Tenants to pay the full years rent by January 4, 2020, in the amount of \$26,400.00.

The Tenant agreed that they had originally agreed to pay the full years rent upfront but that when they were unable to come up with the full \$26,400.00 the Landlord had agreed to monthly payments of rent, in the amount of \$2,200.00 due by the fourth day of each month.

The Landlord testified that they had agreed to monthly payments of rent.

Both parties agreed that the Tenants had paid the March rent in full, on March 9, 2020.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the agreed upon testimony of these parties, and I find that the rent for this tenancy is \$2,200.00 per month and is due by the fourth day of each month.

I find that the Tenant received the Landlord's Notice to End Tenancy on March 7, 2020, and that as of the date of that notice the outstanding rent for this tenancy was \$2,200.00.

When a tenant receives a 10-Day Notice to end tenancy the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this the notice is of no effect, as per section 46(4) of the *Act*.

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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

In this case, the Landlord testified that they collected the full outstanding rent for March 2020, on March 9, 2020. I find that the Tenant did pay the outstanding amount due within five days of receiving the Notice, as allowed by the Act, rendering the Notice of no effect. Therefore, I find the Notice was of no effect under the Act and I must allow the Tenants' application to cancel the Notice.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I allow the Tenants' Application to dispute the Notice, as I find the Notice was of no effect after the Tenants paid the outstanding rent within the five-day period set out under the Act. The tenancy will continue until 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: June 2, 2020

Residential Tenancy Branch