



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 a landlord's application for an Order of Possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent served on July 9, 2020. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the parties exchanged their respective hearing documents and evidence upon each other and I admitted their materials into evidence for consideration in making this decision?

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice served on July 9, 2020?

Background and Evidence

The landlord's agent did not have the tenancy agreement before him and he testified that: the tenancy started in 2017 and the tenant paid a security deposit of \$1200.00 and nothing was paid for a pet damage deposit. The landlord's agent testified that the rent was initially \$2400.00 due on the first day of every month but that it was reduced to \$2100.00 per month starting December 2018 or February 2019 because some greenhouses on the property were destroyed by weather.

The tenant submitted some pages of the written tenancy agreement indicating a tenancy started on August 31, 2016 and a security deposit of \$1200.00 and a pet damage deposit of \$200.00 was required and paid. The tenant agreed the rent was initially set

at \$2400.00 payable on the first day of every month and it was reduced to \$2100.00 with the landlord's agreement starting January 2019; however, the tenant was of the position the landlord was going to backdate the rent reduction to January 2017 and compensate him for fines incurred and work the tenant performed with respect to cleaning up the debris on the property. The tenant acknowledged that he and the landlord did not come to a final agreement with respect to how much compensation he would be paid or may deduct from rent. The tenant pointed out that there was a hearing on February 21, 2020 where he sought cancellation of a 10 Day Notice dated December 9, 2020 and the tenant's claims for compensation (file number referenced on the cover page of this decision).

I turned to the decision issued on February 21, 2020 and I note the Arbitrator cancelled the 10 Day Notice due to flaws on the Notice and inconsistencies with the ledger prepared by the landlord and the landlord's testimony. By way of the previous Application for Dispute Resolution tenant did make a request for authorization to reduce rent payable and obtain monetary compensation from the landlord; however, the Arbitrator did not consider those claims and dismissed them with leave to reapply. The tenant has not yet reapplied for a rent reduction or monetary compensation against the landlord and I informed the parties that such claims are not before me and unless there is an agreement from the landlord for the tenant to pay less than \$2100.00 per month, or the tenant receives authorization from an Arbitrator to pay less than \$2100.00 per month, the rent remains at \$2100.00 per month.

The landlord is seeking an Order of Possession under this Application for Dispute Resolution based upon a 10 Day Notice served to the tenant in person on July 9, 2020. I was provided a copy of only the first page of the 10 Day Notice by the landlord. Since I did not have the second or third page, I instructed the landlord to read into evidence the amount of rent and date indicated on the second page of the 10 Day Notice. The landlord's agent testified that the second page of the 10 Day Notice states the tenant failed to pay \$2100.00 that was due on February 1, 2020.

I noted the landlord had prepared a spreadsheet for this proceeding and based on the spreadsheet it appeared the tenant had not paid rent for several months prior to February 2020 and there was a \$100.00 credit applied to the tenant's account on February 21, 2020. The landlord's agent explained that the landlord will pursue the tenant for all of the rent he owes in the future but that it is focused on regaining possession of the rental unit. The landlord's agent indicated the \$100.00 credit was for cleaning the tenant invoiced the landlord; however, it appears to me that the \$100.00

credit would be the \$100.00 filing fee awarded to the tenant by the Arbitrator on February 21, 2020.

The landlord's agent testified that after serving the tenant the 10 Day Notice on July 9, 2020 a \$2100.00 payment was made by the tenant, via etransfer, on July 14, 2020 but that the landlord considered the payment to be the rent for July 2020. The landlord informed the tenant that they would give him until July 19, 2020 to pay the outstanding rent for February 2020 but he did not.

The tenant testified that he made a payment of \$2100.00 late in the evening of July 14, 2020, via etransfer, and that it was to satisfy the amount of rent indicated on the 10 Day Notice served on July 9, 2020 so that the 10 Day Notice would be nullified. The tenant acknowledged that rent for July 2020 has not yet been paid.

The landlord's agent acknowledged that the tenant made the payment by etransfer on July 14, 2020 and that the message with the payment merely said it was for "rent".

Analysis

In making this Application for Dispute Resolution for an Order of Possession the landlord has a burden to prove a valid notice to end tenancy was served upon the tenant and it is required that the landlord provide the tenant and the Residential Tenancy Branch with a copy of all pages of the notice to end tenancy. In this case, the landlord has only provided one page of the three page notice which in itself may have been sufficient to dismiss the landlord's Application for Dispute Resolution. However, both parties appeared to understand that the 10 Day Notice dated July 9, 2020 pertained to unpaid rent of \$2100.00 for February 2020 and I continued to determine whether the 10 Day Notice was nullified.

Upon consideration of everything before me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very specific and limited circumstances when a tenant may legally withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

I accept the consistent testimony of the parties that the monthly rent obligation was reduced to \$2100.00 with the landlord's consent or agreement well before February 2020. The tenant did not have the landlord's agreement or an Arbitrator's authorization to withhold or reduce rent that was due on February 1, 2020. As such, the tenant was obligated to pay \$2100.00 on February 1, 2020 and he failed to do so.

Starting June 24, 2020, the moratorium on issuing notices to end tenancy due the COVID -19 pandemic was lifted in many circumstances. Starting June 24, 2020, a landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent so long as the unpaid rent does not pertain to the "affected period" which is March 18, 2020 – August 17, 2020. Accordingly, I find the landlord was in a position to issue the 10 Day Notice to the tenant for rent that was not paid for February 2020 when it served the tenant with such a notice on July 9, 2020.

The tenant made a payment of \$2100.00 to the landlord on July 14, 2020. The parties took a different position as to what the tenant was making this payment for. The landlord accepted the payment as rent for July 2020 rent but the tenant intended it to be for the outstanding rent indicated on the 10 Day Notice. I find the tenant's position makes more sense since he did not dispute the 10 Day Notice and he made a payment within five days of receiving the 10 Day Notice to nullify the 10 Day Notice. Whereas it does not make sense to me that the tenant would pay July 2020 rent and then not pay the February 2020 rent that was on a 10 Day Notice and failure to pay the rent for February 2020 would end the tenancy.

In light of the above, I find the tenant paid the rent indicated on the July 9, 2020 10 Day Notice within five days of receiving the 10 Day Notice which nullifies the 10 Day Notice. Since the 10 day Notice was nullified by payment within five days, I find the tenancy remains in effect and the landlord is not entitled to an Order of Possession at this time.

The landlord's application for an Ordre of Possession and recovery of the filing fee is dismissed in its entirety.

The landlord is ordered to reflect in its ledger that the tenant's July 14, 2020 payment as being a payment for rent for the month of February 2020 and the rent for July 2020 has not yet been paid.

If rent remains outstanding for months prior to February 2020 the landlord remains at liberty to issue another 10 Day Notice to the tenant.

Conclusion

The 10 Day Notice dated July 9, 2020 was nullified by payment by the tenant on July 14, 2020 and the landlord's application is dismissed.

The landlord is ordered to reflect the payment made on July 14, 2020 as being for rent for the month of February 2020.

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: August 28, 2020

Residential Tenancy Branch