



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 an Application for Dispute Resolution (Application) that was filed by the Tenant under the *Residential Tenancy Act* (Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord's spouse, both of whom provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord and their spouse was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Tenant, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were personally served on the Tenant on July 16, 2020. In support of this testimony the Landlord pointed to a copy of the Notice of Dispute Resolution Proceeding Package where the Tenant confirmed receipt on July 16, 2020. The Landlord stated that their documentary evidence was personally served on the Tenant on August 4, 2020. In support of this testimony the Landlord pointed to a document signed by the Tenant confirming service in the above manner on August 4, 2020. As a result, I find that the Tenant was personally served with the Notice of Dispute Resolution Proceeding Package, including a copy of the

Application and the Notice of Hearing, on July 16, 2020, and the Landlord's documentary evidence on August 4, 2020, in accordance with the *Act* and the Rules of Procedure.

Based on the above and pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled despite the Tenant's absence, and I accepted the Landlord's documentary evidence for consideration. Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 (2) (b) based on an undisputed 10 Day Notice?

Background and Evidence

The Landlord stated that a tenancy under the Act exists, that rent in the amount of \$650.00 is due on the first day of each month, and that as of March 1, 2020, the Tenant owed \$1,150.00 in outstanding rent, as they had a previous balance owing due to incomplete payments. The Landlord stated that except for one \$500.00 payment on June 8, 2020, the Tenant has not paid any rent since February 27, 2020, when they paid \$700.00. The Landlord stated that the Tenant currently owes \$690.00 in outstanding rent for the period up to and including March 1, 2020 (\$1,150.00, less the \$500.00 payment made on June 8, 2020), and \$3,250.00 in outstanding rent for April 1, 2020 – August 31, 2020. The Landlord submitted documentary evidence in support of this testimony, including proof of service documents and a spreadsheet of rent owed and paid by the Tenant.

The Landlord stated that on July 3, 2020, they personally served a 10 Day Notice on the Tenant with regards to the remaining rent owed on or before March 1, 2020. The 10 Day Notice in the documentary evidence before me is signed and dated July 3, 2020, has an effective date of July 12, 2020, and states that as of July 3, 2020, the Tenant owed \$390.00 in outstanding rent. The Landlord stated that they called the Residential Tenancy Branch (Branch) prior to serving the 10 Day Notice and mistakenly thought

that they were only allowed to list rent for the period of March 1, 2020 – March 17, 2020, on the 10 Day Notice, and as a result, the 10 Day Notice only lists \$390.00, instead of the full amount currently owed up to and including March 1, 2020, which is \$650.00.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Based on the affirmed and undisputed testimony of the Landlord and the proof of service document signed by the Tenant, I find that the 10 Day Notice was personally served on the Tenant on July 3, 2020. Although there is no evidence before me that the Tenant disputed the 10 Day Notice or payed the outstanding rent listed on the 10 Day Notice within the legislative timeframe set out under section 46 (4) of the Act, I never the less find that the 10 Day Notice is invalid as it indicates that the Landlord is seeking an end to the tenancy for rent due during the affected period of March 18, 2020 – August 17, 2020, without having first entered into a repayment plan with the Tenant as required by COVID-19 Regulation (No.2) (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) and Policy Guideline #52.

While I accept the Landlord's testimony that the rent due according to the 10 Day Notice was not actually for the affected period, this is not at all clear to me on the face of the 10 Day Notice itself. As a result, I am not satisfied that it would have been clear to the Tenant.

Based on the above, I therefore order that the 10 Day Notice dated July 3, 2020, is cancelled and of no force or effect. I order that the tenancy therefore continue in full force and effect until it is ended in accordance with the Act.

Despite the above, I reminded the Tenant that rent continues to be due on time and in full in accordance with their tenancy agreement and I caution them that the Landlord remains at liberty to serve a new 10 Day Notice for rent that was due on or before March 17, 2020, provided the 10 Day Notice makes it clear that the rent shown on the 10 Day Notice relates to a date on or before March 17, 2020. The Tenant should also be aware that if they do not pay Septembers rent on time and in-full, the Landlord remains at liberty to serve a new 10 Day Notice for all rent owed on or before March 17, 2020, **and** after September 1, 2020. Further to the above, the Landlord also remains at liberty to serve a 10 Day Notice in relation to affected rent due between March 18, 2020

- August 17, 2020, provided they comply with the repayment plan requirements and the Tenant fails to comply with the payment plan.

As the Landlord was not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety, without leave to reapply on the basis of this same 10 Day Notice dated July 3, 2020.

I order that the 10 Day Notice dated July 3, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties 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: August 20, 2020

Residential Tenancy Branch