



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession for unpaid rent or utilities or to recover the cost of the filing fee.

The landlord, the tenant and the partner of the tenant AN (partner) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. I find the parties were sufficiently served as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and were advised that the decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that monthly rent was \$1,400.00 per month and is due on the first day of each month.

The landlord submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 18, 2020 (10 Day Notice). According to the 10 Day Notice, the tenants owed \$5,800.00 in unpaid rent as of March 1, 2020. The effective vacancy date listed on the 10 Day Notice was August 4, 2020. The landlord served the 10 Day Notice by registered mail on July 23, 2020. The tenants stated that they paid the \$5,800.00 amount owing on July 24, 2020. The landlord confirmed that the \$5,800.00 amount owing was paid by the tenants on July 24, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46(4) of the Act applies and states:

Landlord's notice: non-payment of rent

46(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.

[Emphasis added]

Given the above, I find the 10 Day Notice has no force or effect as the tenants had 5 days to pay the \$5,800.00 amount owing from July 23, 2020 and they paid it the next day, on July 24, 2020, which was confirmed by the landlord. As a result, I dismiss the landlord's application as the 10 Day Notice has no effect once rent is paid in full within 5 days after receiving the 10 Day Notice.

I order that the tenancy continue until ended in accordance with the Act.

As the landlord's application was dismissed, I do not grant the filing fee.

Conclusion

I dismiss the landlord's application as the tenant's paid the outstanding rent within 5 days of receiving the 10 Day Notice.

The tenancy shall continue until ended in accordance with the Act.

The filing fee is not granted as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 14, 2020

Residential Tenancy Branch