



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OK FALLS HOUSING + RECREATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to section 46 of the *Residential Tenancy Act* (the "Act") for cancellation of a 10 Day Notice to End Tenancy for unpaid rent.

This matter was set for hearing by telephone conference call at 9:30 am. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the agent of the corporate respondent (the "landlord").

Background and Evidence

The landlord testified that the monthly rent for this tenancy is \$485.00 payable on the first of each month. The tenant failed to pay rent from February 1, 2020 onwards. There was a rental arrear of \$4,331.65 as at September 1, 2020 and the landlord issued a Notice to End Tenancy on that date. A copy of a 10 Day Notice was submitted into evidence. The notice is not in the prescribed form and indicates there is unpaid rent in the amount of \$4,331.65.

The landlord testified that the rental arrear arises from the months of February to September, 2020 and they have not given the tenant a repayment plan.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the applicant did not attend the hearing by 9:40 am, and the respondent appeared and was ready to proceed, I dismiss the claim without leave to reapply.

Section 55 of the *Act* provides 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.

I find that the 10 Day Notice issued by the landlord, is not in the prescribed form and indicates an arrear of \$4,331.65 which is comprised in part of unpaid rent that became payable on April 1, 2020, May 1, 2020, June 1, 2020, July 1, 2020 and August 1, 2020.

Pursuant to section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation") a landlord must give a tenant a repayment plan if there is overdue rent that became payable during the specified period between March 18, 2020 and August 17, 2020. Residential Tenancy Policy Guideline 52 elaborates by providing that "a landlord cannot pursue an eviction for affected rent unless they have already given a valid repayment plan".

In the present circumstances, I accept the testimony of the landlord that they have not offered a repayment plan as required. I further find that the 10 Day Notice does not meet the form and content requirement of section 52 of the Act. Therefore, while I dismiss the tenant's application, I decline to issue an Order of Possession in the landlord's favour.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: October 23, 2020

Residential Tenancy Branch