



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on September 2, 2020.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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.

Preliminary Issues

At the outset of the hearing the landlord request that their Application for Dispute Resolution scheduled for January 15, 2021, be joined with todays hearing. The issues in the landlord application are to obtain an order of possession and a monetary order in excess of \$22,000.00.

As this hearing is related to unpaid rent for September 2020, and a notice to end tenancy has been issued, I must consider whether the landlord is entitled to an order of possession, pursuant to section 55 of the Act at today’s hearing. However, as this hearing is only related to the issue of September 2020, rent. I decline to join the landlord’s application as it is not specifically related to the issue before me.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice. The tenant stated at that time there was a discussion with the landlord and the landlord stated September rent would be applied towards August 2020. The tenant stated they did not pay the rent for September as it not going to be applied towards the September 2020, rent.

The landlord's agent testified that the tenant is not be truthful as they were in rent arrears prior to the state of emergency. The agent stated they gave the tenant the repayment plan in accordance with the regulation which did not come into effect until October 2020. The agent stated that the tenant simply did not pay the rent and has failed to pay rent for October 2020.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

How to end a tenancy is defined in Part 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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, I find the tenant has failed to paid rent for September 2020. I do not accept the tenant's evidence that the landlord said it would be applied to August 2020, rent. The tenant had received a repayment plan for affect rent during the state of emergency, which August rent was included.

Further, even if I accept the evidence of the tenant, which I do not. They were still were required to pay the rent in full. If the landlord had applied that to August 2020, rent than that would be grounds to dispute the Notice. However, rent simply was not paid.

I find the Notice issue on September 2, 2020, valid and remains in full force and effect. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) 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 landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlords are granted an order of possession.

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 16, 2020

Residential Tenancy Branch