



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on October 7, 2020;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 10, 2020; and
2. To recover the cost of filing the application.

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.

Preliminary and Procedural matter

At the outset of the hearing the landlord stated that they issued the September 10, 2020, notice to end tenancy for affected rent. The landlord stated that they were unaware that they had to issue a repayment plan for the affect rent. The landlord stated that the September notice should be cancelled.

Issues to be Decided

Should the Notice be cancelled?
Are the landlords entitled to recover unpaid rent?

Background and Evidence

The tenancy began on March 11, 2012. Rent in the amount of \$1,400.00 was payable on the 10th day of each month. A security deposit of \$700.00 was paid by the tenants.

The landlord testified that the tenants were served with the Notice on October 7, 2020, for unpaid rent for September 2020. The landlord stated that the tenant did not dispute the Notice and did not pay the rent within 5 days. The landlord stated that they did receive rent for September on October 16, 2020.

The tenant confirmed they received the Notice on October 7, 2020. The tenant testified that they did not dispute the Notice because they paid the rent within 10 days. The tenant stated that the Notice is very confusing because it says it is a 10-day notice, yet it really is only a 5 days notice.

Analysis

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

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]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(5) If a tenant who has received a notice under this section **does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.**

In this case, the tenants did not dispute the Notice. The evidence of the tenant was that they received the Notice on October 7, 2020 and paid the rent within 10 days of receiving the Notice. However, I find that is not in accordance with section 46 of the Act, as rent must be paid within 5 days. This section of the Act is clearly written on the Notice.

I find the tenants failed to pay the outstanding rent within 5 days and did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 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 tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

In this case, I decline to hear the landlord's claim for unpaid rent, as it appears rent for September 2020, and October 2020, have now been paid. I grant the landlord leave to reapply for all unpaid rent as any affect rent will no longer be subject to the repayment plan after the tenancy has ended.

In this case, I would normally grant the landlord the cost of the filing fee, since they were successful with their application. However, the tenant also had an application to cancel the notice to end tenancy that was issued in September 2020. That Notice was not valid, and the tenant is also entitled to recover their filing fee. Therefore, I decline to award either party the cost of the filing fee, as they would simply be offset with each other.

Conclusion

The tenants failed to pay rent within 5 days and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

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: November 20, 2020

Residential Tenancy Branch