



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on September 25, 2020 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on November 27, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. The tenant confirmed they received the prepared evidence of the landlord in advance of the hearing. The tenant also confirmed they did not prepare documentary evidence in advance for this hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement signed by both parties on June 17, 2019. The agreement sets out the rent amount of \$3,800, payable on the first of each month. The tenancy reverted to a month-to-month basis after the initial fixed term ended on June 30, 2020.

In their Application, the tenant provided that the landlord served a 10-Day Notice on September 22, 2020. This was posted on the door.

The landlord spoke to their reasons why they issued the 10-Day Notice. This was due to repeated late payments of rent. When they served the document on September 22, 2020, rent was not paid for that month. The landlord provided a document that shows dates of rent payments, the amounts paid, and a memo for each consecutive month showing when a full month's rent was received.

Analysis

The *Act* section 46 states, in part:

- 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.

Section 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a)be signed and dated by the landlord or tenant giving the notice,
 - (b)give the address of the rental unit,
 - (c)state the effective date of the notice,
 - (d). . . state the grounds for ending the tenancy,
. . .and
 - (e)when given by a landlord, be in the approved form.

In this hearing, the evidence was submitted by the landlord. This did not include a copy of the 10-Day Notice. Rather, they provided a copy of a separate One-Month Notice to End Tenancy for Cause that was subsequently issued to the tenant.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony; however, there is not sufficient evidence to show the One Month Notice is valid and compliant with the provisions of section 52(e).

For this reason, the core of section 47 is not established.

For these reasons, I order the 10-Day Notice to be cancelled. I find the 10-Day Notice issued by the landlord on September 22, 2020 does not comply with the requirements set out in section 52.

Conclusion

For the reasons above, I order the 10-Day Notice issued on September 22, 2020 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 27, 2020

Residential Tenancy Branch