



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

On September 25, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for ten minutes and the Tenant did not call into the hearing during this time.

The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding by registered mail sent to the Tenant on September 30, 2020. The Landlord provided a copy of the registered mail receipt and tracking information as proof of service.

I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act. The Tenant is deemed to have received notice of the hearing on October 5, 2020 the fifth day after it was mailed.

The hearing proceeded and the Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issue to be Decided

- Is the Landlord entitled to an order of possession based on an undisputed 10 Day Notice?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2020 and is currently on a month to month basis. Rent in the amount of \$1,200.00 is to be paid to the Landlord each month. The Tenant paid the Landlord a security deposit in the amount of \$600.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for September 2020.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 1, 2020 by posting the Notice to the Tenant's door.

The Landlord also testified that a repayment plan was given to the Tenant for recovery of \$4,200.00 in unpaid rent in June, July and August and September 2020. The repayment plan schedule is for nine payments to begin on November 1, 2020. The Landlord provided a copy of the repayment plan dated September 1, 2020. The Landlord testified that the repayment plan was also posted to the Tenant's door on September 1, 2020.

The Landlord testified that the Tenant failed to pay the rent due under the tenancy agreement for September 1, 2020.

The Landlord also submitted that the Tenant had failed to all the rent owing for June, July and August 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$4,200.00 which was due on September 10, 2020. The Landlord clarified that this amount includes the \$1,200.00 owing for September 2020 rent. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay any amount of rent since receiving the 10 Day Notice. The Landlord further clarified that the Tenant did not make a repayment plan rent payment for November 2020.

The Landlord testified that the Tenant is still living in the rental unit and the Landlord seeks an order of possession. The Landlord testified that the Tenant told him, "I don't care what you do, I am not paying the rent". The Landlord testified that the Tenant is collecting the covid benefit but is refusing to pay any rent.

Analysis

Ministerial Order M195 issued June 24, 2020, pursuant to the State of Emergency declared on March 18, 2020 provides that affected rent is rent that is due and payable during the emergency period / state of emergency (March 18, 2020 to August 17, 2020) The Order provides that Landlords cannot evict Tenants for unpaid rent relating to affected rent during this period. A Landlord is required to give the Tenant a repayment plan for affected rent that was not paid between March 18, 2020 to August 17, 2020.

Rent due under a tenancy agreement after August 17, 2020 is not considered "affected rent" and if the rent is not received when it is due a Landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent.

Section 55 (2)(b) of the Act provides that a Landlord may request an order of possession of a rental unit by making an application for dispute resolution when a notice to end the tenancy has been given by the Landlord, and the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities I make the following findings:

I find that the Landlord issued the 10 Day Notice which I find was deemed received by the Tenant on September 4, 2020.

I find that the \$4,200.00 of unpaid rent cited in the 10 Day Notice includes \$1,200.00 for September 2020 rent. I find that September 2020 rent is not considered "affected rent". I find that the Tenant had five days to pay the \$1,200.00 September 2020 rent or dispute the 10 Day Notice. I find that the Tenant failed to pay the September 2020 rent within five days of receiving the 10 Day Notice and I also find that the Tenant failed to dispute the 10 Day Notice. The tenancy has ended.

I find that the Landlord is entitled to an order of possession for the rental unit, 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep the amount of \$100.00 from the security deposit.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not pay the September 2020 rent within 5 days of receiving the 10 Day Notice and did not file to dispute the Notice.

The tenancy has ended.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant.

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 27, 2020

Residential Tenancy Branch