



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YORKSON INVESTMENT CO
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

On October 2, 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 Landlords agents (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for fourteen 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 using registered mail sent to the Tenant at the dispute address on October 6, 2020. The Landlord provided a copy of the registered mail receipt as proof of service. The Landlord testified that the registered mail was delivered.

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 hearing proceeded.

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

Issues 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 in June 2013 and is on a month to month basis. Rent in the amount of \$1,555.00 is to be paid to the Landlord by the first day of each month.

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

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 11, 2020 ("the 10 Day Notice"). The Landlord, Ms. S.S. testified that she posted the 10 Day Notice to the Tenant's door on September 11, 2020. The 10 Day Notice has an effective date of September 22, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$3,025.83 which was due on September 1, 2019. The Landlord testified that the year the rent was due is 2020 and that writing 2019 was a clerical mistake. 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 the rent owing within the Notice five days of receiving the 10 Day Notice.

The Landlord testified that the Tenant is still living in the rental unit and continues to not pay the rent. The Landlord seeks an order of possession for the rental unit.

Analysis

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order M089 provides that a Landlord must not issue a notice to end tenancy while the Order is in effect. The Order applies from March 30, 2020 and ends on the date on which the state of emergency declared March 18, 2020 expires or is cancelled.

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; however, the order no longer prohibits a Landlord from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if the arrears were accrued prior to March 18, 2020 or accrued after August 17, 2020.

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. In the circumstances described in 55 (2)(b), the director may, without any further dispute resolution process grant an order of possession.

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 Tenant failed to pay rent, which included September 2020 rent, when it was due under the tenancy agreement. I find that the Landlord posted the 10 Day Notice on September 11, 2020 and the Tenant is deemed served three days later on September 14, 2020. I find that the clerical error of the year within the 10 Day Notice does not invalidate the Notice. The 10 Day Notice is dated September 11, 2020 and was posted on September 11, 2020 and the Tenant knows that the tenancy agreement requires the Tenant to pay rent each month.

I accept the Landlords' testimony that the rent owing was not paid to the Landlord within five days of the Tenant receiving the 10 Day Notice. I also find that the Tenant did not dispute the 10 Day Notice and therefore the tenancy has ended. I find that the Landlord is entitled to an order of possession for the rental unit.

The Landlords' application is successful. The Landlord is granted an order of possession effective two (2) 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 grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

The Landlords application for an order of possession based on an undisputed 10 Day Notice is successful. The Tenant received the 10 Day Notice; failed to pay the rent; and did not dispute the 10 Day Notice.

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: December 10, 2020

Residential Tenancy Branch