



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 EXECTUVIVES REALTY
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, OLC

Introduction

On October 9, 2020, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant also applied to suspend or set conditions on the Landlords right to enter the rental unit and for the Landlord to comply with the Act, Regulation, or tenancy agreement.

This matter was set for hearing by telephone conference call at 9:30 am on this date. 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. Therefore, as the Applicant did not attend the hearing by 9:40 am, I dismiss the application without leave to reapply.

They Landlord was provided with the opportunity to present oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice dated October 8, 2020, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlords testified that the tenancy was in place prior to them taking over as property managers for the rental unit on July 1, 2020. The tenancy is on a month to month basis. Rent in the amount of \$1,000.00 is due to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2020 ("the 10 Day Notice"). The Landlord testified that the 10 Day Notice was posted on the Tenant's door on October 8, 2020.

The 10 Day Notice provides that the Tenants have failed to pay rent in the amount of \$300.00 which was due on October 1, 2020. 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.

The Landlord testified that the Tenant paid the full rent due as cited in the 10 Day Notice on October 16, 2020.

The Landlord testified that they are not seeking to end the tenancy at this time, and they declined any entitlement for an order of possession for the rental unit.

Analysis

Section 26 of the Act states that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant applied to dispute the 10 Day Notice on October 9, 2020. The Tenant had five days from October 9, 2020 to pay the rent owing under the tenancy agreement.

I accept the Landlords' testimony that the Tenant paid the rent that was owing on October 16, 2020. The Tenant paid the rent seven days after receiving the 10 Day Notice. I find that the Tenant failed to pay the rent owing within five days of receiving the 10 Day Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement.

I dismiss the Tenant's application to cancel the 10 Day Notice dated October 8, 2020.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession.

The Landlord declined to end the tenancy and declined the offer of an order of possession for the rental unit.

The Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2020 is cancelled. The tenancy will continue.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Landlord declined an opportunity to end the tenancy and receive an order of possession for the rental unit.

10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2020 is cancelled.

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 29, 2020

Residential Tenancy Branch