



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on September 30, 2020.

Only the landlords appeared.

The landlord stated that the tenant informed them that they would not be attending because the tenants believed that this issue was resolved when they paid the outstanding rent. The landlord stated that they told the tenants that this did not resolve the issue, as rent was not paid within the 5 days and they would be seeking an end to the tenancy.

Issue to be decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2020. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant

The tenant submits in their application that they received the Notice, on September 30, 2020. The tenant further submits the following “... I am two months behind on my rent I am waiting for my student loan...”

The landlord testified that the tenant did not pay the outstanding rent within 5 days of receiving the Notice and therefore the tenancy has legally ended. The landlord stated that on October 8, 2020, they received the outstanding rent and issued the tenants a receipt for use and occupancy.

The landlord stated that the tenants have now failed to pay subsequent rent.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

...

How to end a tenancy is defined in Part 4 of the Act.

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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

I accept the evidence of the tenants that they received the Notice on September 30, 2020.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenants admitted rent was not paid at the time they made their application. Further, the tenants were simply seeking time to pay the rent, which I have no authority to consider under the Act.

In this case, I accept the evidence of the landlord that the tenants did not pay the outstanding rent within the statutory limit, as their last day to pay the outstanding rent was October 5, 2020. Rent was not paid until October 8, 2020 and the tenants were aware the landlords were not reinstating the tenancy as they were issued a receipt for use an occupancy. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

While the effective date in the Notice is incorrect, as it is earlier than the Act allows, I find that date automatically corrects to be deemed to be the earliest date that complies with the Act, pursuant to section 53 of the Act, which is October 10, 2020. I find the tenancy legally ended on October 10, 2020 and the tenants are now overhold the premise as occupants.

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. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession.

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