



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:45 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by an agent ("SA"). I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, SA, and I were the only ones who had called into this teleconference.

Preliminary Issue – Service

The tenants did not provide any documentary evidence in support of their application. SA stated that the notice of dispute resolution proceeding from the tenants served the landlord with did not include the page which had the landlord's dispute access code used for uploading evidence. As a result, the landlord did not upload any evidence to the RTB evidence portal in advance of the hearing.

I permitted the landlord to upload a copy of the tenancy agreement and the Notice during the hearing. The tenants are not prejudiced by this, as they already have each of these documents in their possession.

I note that the landlord uploaded copies of two 10 Day Notices to End Tenancies which were not the Notice at issue in this application. I exclude those documents from evidence and have not considered them.

Preliminary Issue – Tenants' Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the tenants bear the onus to prove that they are entitled to an order that the landlord comply with the Act, and the landlord bears the onus to show that the Notice is valid and should not be cancelled.

By failing to attend, the tenants are not able to discharge their evidentiary burden to show that they are entitled to an order that the landlord comply with the Act. As such, I dismiss this portion of their application, without leave to reapply.

As the landlord bear the onus to show the Notice is valid, the tenants' non-attendance does not hinder my ability to cancel the Notice. The balance of this decision will address the validity of the Notice.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord and SA, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Tenant DC and his brother (full name on the cover of this decision) entered into written, fixed-term tenancy agreement with the landlord starting July 1, 2019 and ending on June 30, 2021. Monthly rent was \$2,800 at the start of the tenancy, plus utilities. The parties agreed in writing (on the tenancy agreement itself) that the monthly rent would increase to \$2,950 in 2020, and to \$3,095 in 2021. The landlord testified that the rent increased to \$2,900 (and not \$2,950) on July 1, 2020. She testified that the parties renegotiated the tenancy shortly thereafter and that monthly rent is currently \$2,850.

The tenants paid the landlord a security deposit of \$1,400 on July 1, 2019. The landlord testified that she used this deposit to pay the outstanding utilities arrears on the rental unit, which the tenants failed to pay.

Tenant MS is not listed on the tenancy agreement.

The landlord testified that tenant DC's brother passed away in September 2020. She testified that DC advised her that he would be leaving the rental unit on December 1, 2020, and that she believes he has done so. She testified that, prior to vacating the rental unit, DC invited a number of people to move into the rental unit with him (which she did not approve). She testified that these people remain in the rental unit, despite DC having vacated.

The landlord testified that, on October 1, 2020, DC paid her \$2,400 towards rent for that month. She testified that she served the Notice on DC on October 5, 2020 by going to the rental unit and giving it to someone who apparently resided there. She testified that she called DC shortly after to confirm that he received it, and DC acknowledged service and was very angry with her.

The Notice had an effective date of October 17, 2020 and indicated that \$450 in rental arrears and \$1,322 in utilities arrears was owing as of October 2, 2020.

DC disputed the Notice with the RTB on October 7, 2020.

The landlord testified that DC paid her \$400 on October 22, 2020. The tenant has not paid the balance of the arrears.

Analysis

Tenant MS is not listed as a party on the tenancy agreement. As such, she is not a tenant under the Act and is not properly a party to this application.

As DC disputed the Notice, I find that he was served with it in accordance with the Act.

I accept the landlord's uncontroverted testimony that DC was \$450 in rental arrears as of October 2, 2020. The landlord provided no evidence regarding the utilities arrears (such as invoice, bills, or receipts from the various utilities providers), as such, I find that

the landlord has failed to discharge her evidentiary burden to show that DC owed the utilities arrears as claimed.

I am satisfied that the tenant has not paid the arrears owed within five days of being served with the Notice. I accept that he paid \$400 on October 22, 2020, but note that the tenant still remains \$50 in arrears for October 2020.

I find that the Notice was validly issued, \$450 was owed on October 2, 2020, and that DC did not pay the arrears owed within five days. As such, I dismiss DC's application to cancel the Notice. Section 55 states:

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.

I have examined the Notice and find that it complies with the form and content requirements of section 52 of the Act.

As such, I order that DC provide the landlord with vacant possession of the rental unit within five days of being served with this decision and the attached order of possession. For added clarity, this order requires not only DC to vacate the rental unit, but also requires all individuals (including MS) who DC permitted to occupy the rental unit to vacate as well.

The landlord must serve this decision and attached order on DC in accordance with the Act and must also post copies of these documents on the front door of the rental unit, so as to serve the occupants of the rental unit as well.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant DC and all other occupants of the rental unit deliver vacant possession of the rental unit to the landlord within five days of being served with a copy of this decision and attached order(s) by the landlord by 1:00 pm.

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 22, 2020

Residential Tenancy Branch