



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Priya Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR,

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to be allowed more time to make an application to cancel a notice to end tenancy, and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on November 4, 2020.

The tenants did not attend the hearing. The landlord’s agent appeared and was ready to proceed.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant submit in their application that they received the Notice on November 4, 2020, and that it was deemed to have been received on November 7, 2020. However, the deemed service only applies when there is no other evidence of when it was actually received. I find the tenants had until November 9, 2020, to make their application. The tenants’ application was not filed for dispute resolution until November 12, 2020.

The tenants request more time to make an application for dispute resolution as they submit in their application that they were told by the Residential Tenancy Branch that the deemed service time limit would apply. However, they did not attend to provide testimony on this issue and this is consistent with the Notice.

Further, the tenants submit in their application that the outstanding rent for November 2020, was paid on November 13, 2020.

The landlord testified that the tenants failed to pay \$410.00 for October 2020, rent and a further \$410.00 for November 2020. The landlord confirmed that they served the tenants with the Notice which shows \$410.00 was owing for November 2020 rent, and that they received \$410.00 from the tenants on November 13, 2020.

Analysis

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

Even though I am not satisfied that the tenants' application was filed within the required time limit, I find even if it was, the tenants would not be successful with their application based on the following.

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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date

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

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 tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, the tenants written submission supports that the rent was not paid at the time they received the Notice on November 4, 2020. Therefore, I find the tenants' application had no merit.

Further, the tenants evidence filed on November 16, 2020, support the rent was not paid until November 13, 2020. I find the tenants did not pay the rent within five days of receiving the Notice, as their last day to pay the rent, which would automatically cancel the Notice was November 9, 2020. Therefore, I find the Notice is valid and remains in full force and effect.

As the tenants' 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.

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.

Conclusion

The tenants' application is dismissed. The landlord is 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: February 04, 2021

Residential Tenancy Branch