



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 16, 2020 (the “Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received November 13, 2020.

The Tenant filed an amendment December 21, 2020 disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received December 19, 2020 by regular mail (the “Notice”).

The Tenant did not appear at the hearing. The Agent for the Landlord did appear at the hearing. The Agent confirmed the Landlord is seeking an Order of Possession based on the Notice.

I waited 10 minutes at the outset of the hearing to allow the Tenant to participate in this hearing scheduled for 11:00 a.m. The Tenant did not call into the hearing. I proceeded with the hearing in the absence of the Tenant. The hearing proceeded for 20 minutes.

I explained the hearing process to the Agent who did not have questions when asked.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package and Tenant’s evidence. The Agent testified that the Landlord’s evidence was served on the Tenant in person January 28, 2021.

Based on the Agent’s undisputed testimony, I am satisfied the Tenant was served with the Landlord’s evidence in accordance with section 88(a) of the Residential Tenancy Act (the “Act”). I am also satisfied the Landlord complied with rule 3.15 of the Rules of

Procedure (the “Rules”) in relation to the timing of service. I have considered the Landlord’s evidence.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted. The landlord named on the tenancy agreement is different than the Landlord. The Agent testified that she believes the Landlord purchased the rental unit after 2016 and became the landlord. Rent is due on or before the first day of each month.

The Agent testified that rent is currently \$1,705.69 and has been since October of 2019.

The Agent confirmed two 10 Day Notices have been served on the Tenant. The Agent sought an Order of Possession based on the Notice.

The Notice was submitted. It states that the Tenant failed to pay \$4,997.57 in rent due December 01, 2020.

The Agent testified that the Notice was sent to the Tenant at the rental unit by regular mail December 08, 2020.

The Agent testified that the Tenant failed to pay \$4,997.57 in rent due between September 01, 2020 and December 01, 2020.

The Agent testified that the Tenant has not paid any rent since being issued the Notice.

The Agent testified that the Tenant did not have authority under the Act to withhold rent that the Agent is aware of.

The Landlord submitted a Vacancy Notice, Tenant’s Notice to Vacate and a lease ledger.

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant failed to attend the hearing and provide a basis, or evidence, for the Application. In the absence of further evidence from the Tenant, the Application is dismissed without leave to re-apply.

Section 55 of the Act requires an arbitrator to issue an Order of Possession if a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the Act.

I am satisfied based on the undisputed testimony of the Agent and evidence submitted that the Tenant is required to pay \$1,705.69 in rent per month on or before the first day of each month pursuant to the tenancy agreement.

I am satisfied based on the undisputed testimony of the Agent and evidence submitted that the Tenant failed to pay \$4,997.57 in rent due from September 01, 2020 to December 01, 2020. I am satisfied \$4,997.57 in rent was outstanding when the Notice was issued.

I am satisfied based on the undisputed testimony of the Agent that the Tenant did not have authority under the Act to withhold rent between September 01, 2020 and December 01, 2020.

Given the Tenant did not pay rent as required, the Landlord was entitled to issue the Notice pursuant to section 46(1) of the Act.

I am satisfied based on the undisputed testimony of the Agent that the Notice was sent to the Tenant at the rental unit by regular mail December 08, 2020. I am satisfied the Notice was served on the Tenant in accordance with section 88(c) of the Act. The Tenant is deemed to have received the Notice December 13, 2020 pursuant to section 90(a) of the Act. I note that the Tenant wrote in the amendment that they received the

Notice December 19, 2020. The Tenant did not appear at the hearing to explain the delay in receiving the Notice. The Tenant would have had to provide compelling evidence to rebut the deeming provision in section 90(a) of the Act (see Policy Guideline 12, page 12). The Tenant did not appear at the hearing to provide evidence to rebut the deeming provision.

The Tenant had five days from December 13, 2020 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the Act.

I am satisfied based on the undisputed testimony of the Agent and the ledger that the Tenant did not pay the outstanding rent.

The Tenant disputed the Notice December 21, 2020, past the five-day deadline.

Pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended December 26, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by December 26, 2020 pursuant to section 46(5)(b) of the Act.

I have reviewed the Notice and find it complies with section 52 of the Act in form and content as required by section 46(2) of the Act.

I have dismissed the Application and found the Notice complies with section 52 of the Act. Further, I am satisfied the Landlord had grounds to issue the Notice and uphold the Notice. Therefore, pursuant to section 55 of the Act, the Landlord is issued an Order of Possession for the rental unit effective two days after service on the Tenant.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession pursuant to section 55 of the Act. The Order is effective two days after service on the Tenant. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 05, 2021

Residential Tenancy Branch