



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, CNC-MT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 16, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated November 11, 2020.
- more time to extend the time limit established by the *Act*;
- an order cancelling a One Month Notice to End Tenancy for Cause, dated December 15, 2020 (the "One Month Notice"); and
- to dispute a rent increase.

The Tenants, the Landlord, and the Landlord's Agent T.G. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
3. Are the Tenants entitled to more time to cancel a Notice to End Tenancy, pursuant to Section 66 of the *Act*?
4. Are the Tenants entitled to dip
5. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on November 1, 2015. According to the tenancy agreement the Tenants are required to pay rent in the amount of \$1,500.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00.

The Landlord stated that he served the Tenants in person with the 10 Day Notice dated November 11, 2020 with an effective vacancy date of November 21, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$5,400.00, in rent arrears. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenants confirmed having received the notice on November 11, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord stated that the parties had a verbal agreement in which the Tenants would pay an additional amount of ret to the Landlord from \$1,500.00 to now \$1,800.00. The Tenants stated that they did not agree to paying this amount to the Landlord. During the hearing, the Tenants agreed that currently, they owe the Landlord \$900.00 in unpaid rent based on the \$1,500.00 a month due to the Landlord in accordance with the tenancy agreement. The Landlord confirmed that if the additional ret increase amount were to be removed from the amount of unpaid rent showing in the 10 Day Notice, that the Tenants would still owe \$900.00 to the Landlords.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenants 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.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In relation to the 10 Day Notice dated November 11, 2020, the Landlord stated that he served the 10 Day Notice in person, to the Tenants on November 11, 2020. The Tenants confirmed receipt on this date and in this manner. Therefore, pursuant to section 88 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

Section 42 of the Act outlines the allowable timing and notice of rent increases;

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

I find that the Landlord provided insufficient evidence to support the rent increase from \$1,500.00 to \$1,800.00 was done in accordance with the *Act*. Regardless, I accept that during the hearing, the Tenants agreed that based on the rent being \$1,500.00, the Tenants owe rent in the amount of \$900.00 to the Landlord. The Landlord confirmed the same. As the Tenants did not pay this outstanding balance to the Landlords within 5 days after receiving the 10 Day Notice, I therefore dismiss their Application to cancel the 10 Day Notice without leave to reapply.

Under section 55 of the *Act*, when a Tenants 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 effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. 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.

As I have found that the tenancy will end based on the 10 Day Notice to End Tenancy, I decline to consider the validity of the One Month Notice dated December 15, 2020 as it is now moot.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and 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 *Residential Tenancy Act*.

Dated: February 08, 2021

Residential Tenancy Branch