



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, RR, PSF, LRE

Introduction

On December 4, 2020, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2020. The Tenant also applied for the following additional relief:

- For an order for the Landlord to make repairs to the unit/ property.
- For a rent reduction.
- For the Landlord to provide services or facilities required by law.
- To suspend or set conditions on the Landlords right to enter the rental unit.

On January 15, 2021 the Tenant amended the application to include a dispute of another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2021.

On February 5, 2021 the Tenant amended the application to include a dispute of another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2021.

The matter was set for a conference call hearing. The Tenant and Landlord’s agent (“the Landlord”) attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent. The Tenant's other claims for are dismissed with leave to reapply.

Issues to be Decided

- Was the rent owing under the tenancy agreement paid when it was due?
- Did the Tenant pay outstanding rent within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent and is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord stated that they recently took over property management duties for the rental unit. The Tenant testified that the tenancy began five years ago and is on a month to month basis. Both parties testified that rent in the amount of \$990.00 is due to be paid to the Landlord by the first day of the month. Neither party provided a copy of the tenancy agreement.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement. The Landlord testified that the Tenant was served with three notices to end tenancy. The Tenant confirmed that she received the following notices to end tenancy:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2020.
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 8, 2020.
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020.

The 10 Day Notices provide that the Tenant has failed to pay rent in the amount of \$10,890.00 which was due on December 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that starting in 2019 the Tenant failed to pay all the monthly rent owing under the tenancy agreement. The Landlord testified that the Tenant has now accrued unpaid rent arrears of \$10,890.00. The Landlord testified that since the notices to end tenancy have been served, the Tenant has paid the full amount of rent each month but has not paid any rent arrears.

The Landlord testified that the Tenant did not pay the rent arrears within 5 days of receiving any of the 10 Day Notices. The Landlord is seeking to enforce the notices to end tenancy and requested an order of possession for the rental unit.

The Landlord testified that he would give the Tenant additional time to vacate the rental unit and requested an order of possession effective March 31, 2021.

In response, the Tenant testified that she is a senior and is only working 4 days per week and things are tight. She testified that the Landlord has failed to maintain the rental property and complete repairs, so she withheld payment of rent.

The Tenant provided testimony acknowledging that she did not pay all the rent owing under the tenancy agreement and stated that she believes she only owes \$5,000.00 in rent arrears.

Analysis

Section 26 of the Act provides that a tenant 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.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant failed to pay all the rent due under the tenancy agreement within five days of receiving the 10 Day Notices to end tenancy.

I find that withholding payment of rent due to a dispute over repairs that may be required is not permitted under the Act. The Tenant did not have a legal right under the

Act to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notices dated December 2, 2020; January 8, 2021; and February 3, 2021.

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 dated February 3, 2021 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 Tenant. Since the Landlord agreed to a later effective date; the effective date is granted for March 31, 2021. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord may apply for dispute resolution if he wants to pursue a monetary order for unpaid rent.

Conclusion

The Tenant failed to pay all the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession effective March 31, 2021 after service on the Tenant

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: March 02, 2021

Residential Tenancy Branch