



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mt. Joy Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking an order as follows:

1. For an order of possession.

The tenant's application is seeking orders as follows:

1. To be allowed more time to dispute a notice to end tenancy; and
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on December 5, 2020.

Only the landlord appeared.

Preliminary issue

At the outset of the hearing the landlord's agent stated that they did not serve the tenant with their application for dispute resolution. The landlord stated that although their application was not served they are relying upon section 55 of the Act for an order of possession.

In this case, the tenant was not served with the landlord's application for dispute resolution. However, under section 55 of the Act, I must still consider whether the landlord is entitled to an order of possession based on the tenant's application to cancel the Notice. There was no requirement for the landlord to make an application as this is a provision of the Act that I must consider in any event.

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for thirteen minutes and the only participant who called into the hearing during this time was the landlord. The tenant did not attend the hearing and the hearing continued in their absence.

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 submitted in their application for dispute resolution that they received the Notice on December 13, 2020. The tenant's written submission states that the Notice was taken off their door on a Saturday; however, a person that was staying with them did not give them the Notice until the 13th of December 2020. Filed in evidence is a copy of the Notice.

The landlord's agent testified that the tenant was served the Notice on December 5, 2020, by posting to the door. The agent stated that the tenant did not pay the rent and has not paid any rent for December 2020, January, February, and March 2021. The landlord seeks an order of possession.

Analysis

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

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.

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 tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution. I find their application was not filed within the statutory time limit. Simply because someone who was staying with them at the time, removed it from the door and that person did not give it to the tenant until a later date, is not an exceptional circumstance that would allow me to grant the tenant more time to dispute the Notice. The tenant is responsible for the action of any person who is staying with them. Therefore, I dismiss the tenant's application to be allowed more time to dispute the Notice.

Further, even if I granted the tenant more time to dispute the Notice; the tenant would not have been successful with their application to cancel the Notice as the tenant has failed to pay the rent owed in the Notice and all subsequent rent. I find the tenant's

application had no merit as the rent was not paid within 5 days after receiving the Notice.

The tenant's application to cancel the Notice is dismissed.

As the tenant's 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 tenant. 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.

Conclusion

The tenant's 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: March 25, 2021

Residential Tenancy Branch