



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: OLC, LRE, LAT, CNR-MT

Landlord's application: OPRM-DR, OPR-DR, FFL, MNRL

Introduction

A hearing was set for 11:00 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), more time to make the application, among several other remedies.

The landlord had also filed an Application for Dispute Resolution by Direct Request to seek an Order of Possession and Monetary Order for unpaid under the Direct Request procedure. On January 11, 2021, the Adjudicator reviewing the landlord's application issued an Interim Decision ordering the landlord's application be joined to the tenant's application and heard at the same time. As provided in the Adjudicator's Interim Decision, the landlord was ordered to serve the tenant with a copy of the Interim Decision and the Landlord's Notice of Dispute Resolution Proceeding.

At the hearing, only the landlord and his wife appeared. There was no appearance on part of the tenant despite leaving the teleconference call open at least 30 minutes.

The landlord testified that he did receive the tenant's Notice of Dispute Resolution Proceeding and Application for Dispute Resolution by registered mail and he understood the tenant filed to dispute the 10 Day Notice. The landlord was prepared to respond to the tenant's Application for Dispute Resolution. The landlord was of the position the tenant was late in filing to dispute the 10 Day Notice. I note the tenant did request an extension on the basis there was a procedural error on part of the Service BC and/or Residential Tenancy Branch in processing her Application for Dispute Resolution on December 7, 2020 and upon review of the notes on the tenant's file, I accept that may be the case. So as to not unduly prejudice the tenant in the event there

was a processing error that was no fault of the tenant, I find the tenant filed her Application for Dispute Resolution within time.

As for service of the landlord's proceeding package and evidence, I was provided a registered mail receipt and the landlord's submission that the Application for Dispute Resolution by Direct Request and supporting evidence, including a copy of the 10 Day Notice, was sent to the tenant by registered mail on December 20, 2020. The landlord affirmed that the registered mail was sent to the tenant at the rental unit address but it was returned as unclaimed. Pursuant to section 90 of the Act, a party is deemed to have received documents five days after mailing, even if they refuse to accept or pick up their mail. The landlord testified, however, that he did not serve the tenant with the Interim Decision and the Landlord's Notice of Dispute Resolution Proceeding as ordered by the Adjudicator on January 11, 2021 because he did not receive those documents from the Residential Tenancy Branch. The landlord did serve an Amendment to an Application for Dispute Resolution to increase the landlord's monetary claim by posting the Amendment to the rental unit door on March 2, 2021.

Since the tenant was not served with the Interim Decision and the Landlord's Notice of Dispute Resolution Proceeding as ordered by the Adjudicator, I find the tenant was not put on notice that this hearing would deal with the landlord's application. Rather, the tenant would have only received notification that this hearing was set to deal with her Application for Dispute Resolution.

In the circumstances described above, I proceeded to deal with the tenant's Application for Dispute Resolution as it would be prejudicial to proceed with the Landlord's Application for Dispute Resolution since the tenant has not been put on notice that it will be dealt with at this hearing. As such, I dismiss the landlord's Application for Dispute Resolution with leave to reapply.

Since the tenant did not appear to present evidence in support of the remedies she seeks on her Application for Dispute Resolution, I dismissed all of her requests without leave to reapply, with the exception of the request for cancellation of the 10 Day Notice since the landlord has the burden to demonstrate a valid Notice to End Tenancy was served to the tenant in order for to consider providing the landlord with an Order of Possession under the tenant's application, as provided under section 55(1) of the Act.

I note that the tenant did not provide a copy of the 10 Day Notice that she seeks to have cancelled, as required under the Rules of Procedure. However, the landlord did serve the tenant with a copy of the 10 Day Notice in sending the tenant the proceeding

package on December 20, 2020 by registered mail. Accordingly, I permitted the landlord to read the content of the 10 Day Notice into evidence and I verified the accuracy of that to the 10 Day Notice submitted by the landlord as evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession under section 55(1) of the Act?

Background and Evidence

The tenancy started on April 1, 2020 and the tenant paid a security deposit of \$900.00. Pursuant to a written tenancy agreement, the tenant was required to pay rent of \$1800.00 on the first day of every month.

The landlord testified that the tenant did not pay rent for July 2020; however, the landlord did not yet issue a repayment plan to the tenant and the rent for July 2020 remains outstanding.

The landlord testified that the tenant failed to pay rent for November 2020. Then on December 2, 2020 the tenant paid only \$780.00 toward rent payable for December 2020.

On December 3, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The 10 Day Notice has a stated effective date of December 13, 2020 and indicates rent of \$1800.00 was outstanding as of November 1, 2020 and rent of \$1020.00 was outstanding for December 2020. The tenant filed to dispute the 10 Day Notice.

The landlord explained that without issuing a repayment plan for the unpaid rent for July 2020 the landlord did not include the unpaid rent for July 2020 on the 10 Day Notice.

In filing the tenant's Application for Dispute Resolution, the tenant indicates she was not given a repayment plan for the July 2020 unpaid rent. As for the balance of rent owing for December 2020 the tenant alleged that she tried to pay the landlord the balance owing on December 5, 2020 and then again on December 11 or 12, 2020 and the landlord would not accept it. The landlord and his wife denied that to be accurate and testified that the tenant did not present any money to the landlord after serving the tenant with the 10 Day Notice. Rather, the landlord and his wife described how after serving the tenant with the 10 Day Notice she said something to the effect "try getting

me out". Later she asked the landlord with withdraw the 10 Day Notice and if he did she pay the rent, but when the landlord asked the tenant what she was offering the tenant offered nothing.

The landlord testified that since December 2, 2020 he has not received any monies from the tenant and she continues to occupy the rental unit.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1800.00 on the first day of every month. I also accept that on December 3, 2020 the tenant was served with a 10 Day Notice indicating rent of \$1800.00 was outstanding for November 2020 and \$1020.00 was outstanding for December 2020. The tenant filed to dispute the 10 Day Notice; however, she did not appear at the hearing to present evidence in support of her position that she attempted to pay the rental shortfall for December 2020 and the landlord refuted the tenant's position at the hearing. Nor, did the tenant present any argument with respect to the unpaid rent for November 2020. As such, I accept the landlord's unopposed testimony, which is supported by the 10 Day Notice, that the tenant failed to pay the rent for November 2020 and failed to pay \$1020.00 toward December 2020 rent. Upon review of the 10 Day Notice, I find it is meets the form and content requirements of the Act. Therefore, I uphold the 10 Day Notice and I dismiss the tenant's request that I cancel it.

Section 55(1) of the Act provides as follows:

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.

In this case, I have upheld the 10 Day Notice and I dismissed the tenant's application to cancel the 10 Day Notice. I am satisfied the 10 Day Notice meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application is dismissed, in its entirety, without leave to reapply.

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant under section 55(1) of the Act.

The landlord's monetary claim against the tenant is dismissed with leave to reapply.

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 18, 2021