



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, PSF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On December 18, 2020, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and for the Landlord to provide services and facilities required by law.

On December 29, 2020, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenants did not. The line remained open while the phone system was monitored for twenty-eight minutes and the Tenants did not call into the hearing during this time.

The Landlord testified that the Tenants served him with their Notice of Dispute Resolution Proceeding documents at the end of December 2020.

I find that the Tenants failed to attend the hearing to pursue their dispute of a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord testified that he served his Notice of Dispute Resolution Proceeding to the Tenants by posting the Notice to their door. The Landlord could not recall when he received the Notice from the RTB or when he served the Notice to the Tenants.

Issue to be Decided

- Is the tenancy ending due to a fundamental breach of the tenancy agreement regarding payment of rent and is the Landlord entitled to an order of possession for the rental unit and monetary order for unpaid rent?

Background and Evidence

The Landlord provided a tenancy agreement that provides the tenancy began on October 1, 2020 and is on a month to month basis. Rent in the amount of \$1,500.00 is due to be paid to the Landlord by the first day of each month.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2020 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay \$1,500.00 that was due on December 1, 2020. The 10 Day Notice also indicates the Tenants have failed to pay \$500.00 of a security deposit.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Landlord testified that the 10 Day Notice was posted to the Tenants' door on December 17, 2020. The Landlord provided a proof of service document.

The Tenants disputed the 10 Day Notice on December 18, 2020 but failed to attend the hearing to pursue the dispute.

The Landlord testified that the Tenants did not pay the all the rent owing under the tenancy agreement within five days of receiving of the 10 Day Notice.

The Landlord testified that the Tenants paid \$1,600.00 to him on January 10, 2020, which is beyond the five days permitted and he also stated that there were still arrears owing at that time.

The Landlord testified that all the rent has now been paid; however, the Landlord wants to end the tenancy due to the Tenants' fundamental breach of the tenancy agreement with respect to when the rent is due to be paid.

The Landlord testified that he did not rescind the 10 Day Notice and reinstate the tenancy.

The Landlord is requesting to end the tenancy and receive an order of possession for the rental unit.

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 on a balance of probabilities, I find that the Tenants received the 10 Day Notice on December 18, 2020, the day they disputed the Notice. I find that the Tenants had until December 23, 2020 to pay all the rent owing under the 10 Day Notice.

I accept the Landlords affirmed testimony that the Tenants paid \$1,600.00 on January 10, 2021. I find that the Tenants did not pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice.

I find that failure to pay the rent when it is due is a fundamental breach of the tenancy agreement.

I dismiss the Tenant's application to cancel the 10 Day Notice dated December 17, 2020. The tenancy is ending.

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 two (2) days, after service on the Tenants. 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.

With respect to the Landlord's application, the Landlord was not able to recall any details regarding the service of his application. I am not satisfied that the Notice of Dispute Resolution Proceeding was correctly served. If the Landlord wants to pursue a claim for unpaid rent, the Landlord has liberty to reapply. The Landlords application is dismissed with leave.

Conclusion

The Tenants failed to attend the hearing to pursue their dispute of the 10 Day Notice.

The Tenants failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenants application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2020 is dismissed.

The Landlord is granted an order of possession effective two (2) days after service on the Tenants

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

Residential Tenancy Branch