



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RP, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy - Section 46 and 47;
2. An Order for repairs - Section 32; and
3. An Order for the recovery of the filing fee - Section 72.

The proceedings were set for a conference call hearing at 9:30 a.m. on this date. The Arbitrator called in to the hearing at the scheduled time. The line remained open while the phone system was monitored for fifteen minutes. The only Party who called into the hearing during this time was the Landlord who was ready to proceed. It was confirmed that the correct call-in numbers and participant codes were provided in the notice of hearing to the Tenant. As the Tenant did not attend the hearing to pursue its application, I dismiss its application without leave to reapply. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy under written agreement started on November 15, 2019. Rent of \$3,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,700.00 as a security deposit. On December 23, 2020 the

Landlord served the Tenant with a one-month notice to end tenancy for cause (the "Cause Notice") by registered mail. Only the name of the company is set out on the Landlord's signature line of the Cause Notice. On February 2, 2021 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent (the "Rent Notice") by posting the Rent Notice on the door. The Rent Notice sets out unpaid rent of \$100.00. The Tenant paid these outstanding arrears on February 9, 2021. The Landlord does not know whether the Tenant has moved out of the unit.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As the Cause Notice does not contain the signature of the Landlord, I find that the Cause Notice does not comply in form and content and is therefore not effective to end the tenancy. I find therefore that the Landlord is not entitled to an order of possession based on the Cause Notice.

Section 46(4) of the Act provides that within 5 days after receiving a notice to end tenancy for unpaid rent the tenant may pay the overdue rent, in which case the notice has no effect. Section 90(c) of the Act provides that a document given or served in

accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached. As the Landlord served the Rent Notice by posting it on the door on February 2, 2021, I find that the Rent Notice is deemed to have been received on February 5, 2021. Based on the Landlord's evidence that the outstanding rent was paid on February 9, 2021, I find that the Tenant paid the overdue rent within the time required and that the Rent Notice therefore has no effect. As the Rent Notice has no effect, I find that the Landlord is not entitled to an order of possession.

Conclusion

The Tenant's application is dismissed. The Landlord is not entitled to 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 Act.

Dated: March 30, 2021

Residential Tenancy Branch