



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNR

Introduction

This hearing was convened in response the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlords to comply with the *Act*, regulation, or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled? If not, is the landlord entitled to an order of possession?

Should an order be made compelling the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The tenancy began on March 1, 2020. The monthly rent of \$1195.00 is due on the first of each month. Due to Covid-19, the tenant was unable to pay rent for several months during the pandemic. The parties agreed that the tenant was to pay \$350.00 by the 15th of each month as part of the repayment plan. The landlord testified that the tenant failed to pay the rent for November 2020 and January 2021 along with one installment of the repayment plan. A notice to end tenancy was issued on January 8, 2021 for an amount of \$2710.00 of rental arrears. The landlord testified that the tenant has made some partial payments but there is still a balance of \$1660.00 in unpaid rent at this time and they have not received the

repayment plan installment for April yet. The landlord testified that the tenant's allegation of paying cash to a former employee for November is unlikely as the employees are forbidden to accept cash without providing a receipt. The landlord testified that their documentation shows that when that former employee was asked about the cash payment, she denied any payment. The landlord submits that the tenant has not provided sufficient proof to support her position. The landlord requests an order of possession.

The tenant gave the following testimony. The tenant testified that she paid the November rent in cash to a former employee who didn't give her a receipt. The tenant testified that she is willing to work this out with the landlord if given enough time. The tenant testified that the amount owing on January 8, 2021 should be reduced by the \$1200.00 cash payment she made in November. The tenant testified that she was continually late in paying the rent due to Covid – 19 and issues with her employment benefits.

Analysis

Section 46 of the Act addresses the issue before me as follows:

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*].

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b)must vacate the rental unit to which the notice relates by that date.

In the tenant's own testimony, she acknowledged an ongoing balance of rental arrears since the notice to end tenancy was issued to her on January 8, 2021. The tenant agreed and confirmed that according to her calculations that there is still at least "around four hundred dollars owing". The tenant did not pay the rental arrears in full

within five days after receiving the notice to end tenancy as required to cancel the notice as outlined above. In fact, the tenant has not caught up at any point since the notice has been issued. In addition, the landlord provided documentation from the former employee refutes the tenants claim that she paid her any rent for November. Based on the documentation before me and the tenant's own acknowledgement of the ongoing rental arrears, I find that this tenancy must end. The notice complies with section 52 of the Act in its form and content. I grant the landlord and order of possession pursuant to section 55 of the Act. The tenancy is terminated.

Conclusion

The landlord is granted an order of possession. The tenant's application is dismissed in its entirety without 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: April 15, 2021

Residential Tenancy Branch