



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

On January 21, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act").

Both the Tenant and the Landlord attended the hearing. In addition, S.J. attended the hearing as an agent for the Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms and agreed not to record the proceeding. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he did not serve the Landlord with the Notice of Hearing package until April 15, 2021. S.J. confirmed that the Landlord received this package yesterday. Despite this, she indicated that the Landlord was prepared to proceed with the hearing. As such, I am satisfied that the Landlord was served with the Notice of Hearing package and the hearing continued.

The Tenant advised that he served his evidence to the tenant upstairs, whom he believed to be an agent for the Landlord. He did not serve his evidence to the Landlord. The Landlord advised that the upstairs tenant is not an agent of the Landlord and that he has not been served any evidence from the Tenant. Based on this testimony, I am not satisfied that the Tenant served the Landlord with his evidence. As such, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Neither party could agree when the tenancy started; however, the Tenant indicated that it began on or around October 2019. Both parties agreed that rent was currently established at \$800.00 per month and that it was due on the first day of each month. As well, a security deposit was not paid.

The Landlord advised that the Notice was served by hand to the Tenant on January 20, 2021. He stated that an acquaintance of his, who filled out the Notice, changed the title of it to a 3 Day Notice to End Tenancy for Unpaid Rent. The Notice indicated that \$8000.00 was owing for rent on January 1, 2021. The effective end date of the tenancy was noted as January 23, 2021. The Tenant's last name on the Notice was spelled incorrectly and the Landlord advised that this was done because this was the only name that he had. The Landlord also confirmed that the address that the Tenant was supposed to vacate from on the Notice was left blank, and there was no reason for this omission.

The Landlord submitted that the Tenant has not paid any rent since April 2020 rent and the Tenant did not have any authorization to withhold the rent. Thus, the Notice was served. As such, the Landlord is seeking an Order of Possession. He also indicated that

a payment plan was never served to the Tenant with respect to affected rent owing due to the pandemic.

With respect to the Notice, the Tenant confirmed that he received the Notice and stated that he was not aware who it was for as his name did not appear on it. Despite this discrepancy, he disputed the Notice just in case. He did understand that the omitted address on the Notice was likely the dispute address, however.

Regarding the amount of rent owing on the Notice, he advised that did not understand how the Landlord came to the figure of \$8000.00, despite his acknowledgement that he has not paid any rent since the tenancy began. Even then, he advised that he had only paid \$700.00. He alleged that the reason he did not pay any rent is because he did not know how to pay it to the Landlord. He referenced a document that the Landlord served with the Notice stating that rent has not been paid since February 2020, which contradicts the Landlord's testimony during the hearing. The Tenant acknowledged that he did not have any valid reason under the *Act* for withholding the rent. He advised that when he received the Notice, he made no attempts to pay any rent, mostly because he could not physically get to the Landlord's residence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the Notice, I find it important to note that the Landlord has manipulated this Notice, and the *Act* does not provide the Landlord with the authority to change the form or content of the Notice. Moreover, the Tenant's name is incorrect on the Notice

and there is no dispute address listed. While I do not find it reasonable that the Tenant did not understand that this Notice was not for him or that the Notice did not apply to the rental unit, I find that the aggregate of these discrepancies causes me to question the validity of the Notice. Furthermore, while the Landlord noted that \$8000.00 was in arrears, despite the Tenant acknowledging that he has not paid any rent, as the Landlord has included rent owing during the affected rent period of time due to the pandemic, I am not satisfied that this amount is correct.

Ordinarily, given that the Tenant has not paid any rent and admittedly did not have any authority under the *Act* to withhold the rent, an Order of Possession would be granted. However, I am not satisfied of the validity of the Notice as I find that the inconsistencies in the Notice to be fatal flaws. Therefore, I find that the Notice of January 20, 2021 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of January 20, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 16, 2021

Residential Tenancy Branch