



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Harbour Realty LTD, Hancon Holdings LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MND, OLC, LRE, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on February 5, 2021, for monetary compensation for loss or other money owed, to have the landlord comply with the Act, to suspend or set conditions on the landlord’s right to enter the unit.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenant’s application is dismissed, with leave to re-apply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

I should note that the tenant hung up from the hearing when I was questioning both parties about the number of pages of the Notice that were served, so I could assess their credibility on this issue. The tenant stated that “do what you have to do, but I am

not paying them a penny” and exited the hearing. I continued the hearing in the absent of any further testimony from the tenant.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on February 5, 2021. The tenant stated that rent was not paid in full within 5 days. The tenant stated they did not pay the rent or any subsequent rent because they feel they are entitled to compensation.

The tenant stated they also just received the first page of the Notice. The tenant stated they have been served with multiple notice to end the tenancy and they have only ever received the first page of each. The tenant indicated that they know their rights as they have been through this process before.

Since the tenant hung up from this hearing, I refer to their affidavit filed in evidence specifically clause 18. I note the affidavit does not have the Exhibits attached.

“CP contact me by telephone to informed me that my rent check has come back returned. I then tell her yes I know I stop payment on the check because you guys owe me for my current \$620 Hydro bill, and nothing has been fixed in my rental unit. ... she then shows up with an eviction notice...

[Reproduced as written.]

The landlords testified that they served all 3 pages of the Notice to the tenant, by posting to the door. The landlord stated that they had a witness attend for verification. The landlord stated that they have been in the business for a long time and they always serve all pages of documents and now have the service witnessed so this allegation cannot be raised. Filed in evidence are all 3 pages of the Notice and proof of service.

The landlords testified that the tenant has not paid rent for February, March, April, and May 2021. The landlords seek and order of possession and a monetary order.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the evidence of the landlords over the tenant that they received the Notice in the proper form. The landlord filed a copy of the full document for my review and consider and the proof of service.

I note in the tenant's affidavit they stated they received the Notice; they did not indicate in their affidavit that they only received one page making the notice to end tenancy invalid. The affidavit clearly shows the tenant stop payment on the rent because they wanted the landlord to pay the hydro bill. This is not a permitted reason to withhold the rent under the Act.

Further, I also do not except the tenant's evidence that they have only received the first page of subsequent notices to end tenancy, because the tenant's own evidence submitted show that they were provided additional pages. This leads me to believe the tenant is not being truthful.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

...

How to end a tenancy is defined in Part 4 of the Act.

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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act and they are entitled to compensation.

However, section 26 of the Act, states the tenant must pay rent even if there is a breach of the Act by the landlord. The tenant did not have the authority under the Act to deduct any portion from the rent, such as an order from an Arbitrator. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since the tenant has not paid rent for February, March, April, and May 2021. I find I must grant the landlord a monetary order for the unpaid rent in the amount of **\$10,000.00**. This order may be filed in the Provincial Court and enforced as an order of the Court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent. The tenant's application is dismissed. The landlords are granted an order of possession and a monetary order.

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: May 10, 2021

Residential Tenancy Branch