



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* ("10 Day Notice").

The landlord appeared, along with son and daughter who were assisting the landlord. The tenants did not appear for their hearing despite leaving the teleconference call open for approximately 30 minutes.

The landlord and his children were affirmed and they were ordered not to make an unofficial recording of the proceeding.

The landlord testified that he received notification of this hearing by way of an email sent by the tenants. I heard that the landlord and the tenants did not ordinarily communicate by email; however, the landlord was prepared to proceed and I deemed the landlord sufficiently served with the tenant's proceeding package pursuant to the discretion afforded me under section 71 of the Act.

The landlord's son testified that he sent the landlord's documentary evidence to the tenant via email, using the same email address the tenant used to send the proceeding package to the landlord, on May 23, 2021. I admitted the landlord's evidence and considered it in making this decision.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenants and the landlord entered into a tenancy agreement that commenced on June 1, 2019 for a fixed term of three months, requiring the tenants to pay rent of \$1150.00 on the first day of every month and a security deposit of \$575.00. The parties entered into a second tenancy agreement for a fixed term that ran from September 1, 2019 to August 31, 2020. The monthly rent remained the same, at \$1150.00 per month. Upon expiry of the fixed term on August 31, 2020 the tenancy continued on a month to month basis.

The tenants failed to pay rent for December 2020 onwards. The landlord's son testified that on March 27, 2020 he personally served the tenant referred to by initials GB with a signed and dated copy of a 10 Day Notice. The 10 Day Notice indicates rent of \$4600.00 is outstanding as of March 1, 2021 and has an effective date of April 7, 2021.

The tenants filed to dispute the 10 Day Notice indicating they did not pay the rent due to loss of employment in November 2020.

The landlord's daughter submitted that after serving the 10 Day Notice the tenants made two payments: \$300.00 on April 1, 2021 and \$500.00 on May 1, 2021 which the landlord accepted in partial satisfaction of the outstanding rent of \$4600.00. The landlord's son submitted that the tenants had also sent another e-transfer of \$850.00 but they cancelled the e-transfer before it was deposited.

The landlord submitted that a re-payment plan was offered to the tenants but the tenants did not accept the terms offered.

The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order for the outstanding rent.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day

Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, I accept that the unopposed evidence before me that the tenants were required to pay rent of \$1150.00 on the first day of every month and they failed to do so for the months of December 2020 onwards. I also accept that the tenants were served with a signed and dated 10 Day Notice and the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. Although the tenants filed to dispute the 10 Day Notice, they did not provide a legal basis for cancelling the 10 Day Notice as loss of unemployment or financial difficulty is not a legal basis for not paying rent under the Act. Therefore, I dismiss the tenant's application that I cancel the 10 Day Notice.

Section 55 of the Act provides as follows:

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 am satisfied the tenants were served with a 10 Day Notice that complies with the form and content requirements of section 52 of the Act and having dismissed the tenant's application to cancel the 10 Day Notice, I must provide the landlord with an Order of Possession and a Monetary Order for the unpaid rent.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service. Also provided to the landlord is a Monetary Order for the unpaid rent of \$4600.00 less the payments totalling \$800.00, or \$3800.00.

The security deposit remains in trust for the tenants and the landlord remains at liberty to file his own Application for Dispute Resolution to seek any loss of rent not included in the Monetary Order I have provided, or other damages or loss pertaining to this tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is provided an Order of Possession effective two (2) days after service and a Monetary Order in the net amount of \$3800.00 to serve and enforce upon 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: May 31, 2021

Residential Tenancy Branch