



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, OLC
 LL: OPR-DR, FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenants applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them together at the same hearing.

I was originally scheduled to only hear the tenant's application but as the parties consented to the matters being combined and as I find that the applications pertain to the same issue of 10 Day Notices and non-payment of rent and the same facts would be considered I ordered that the matters be combined.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in November 2020. The monthly rent is \$1,700.00 payable on the 15th of each month. The tenant failed to pay rent in full for March, 2021 and the landlord issued a 10 Day Notice dated March 25, 2021. The tenant paid the rent in full on March 26, 2021.

The tenant failed to pay rent in full on the due date for April 2021. The landlord issued a 10 Day Notice dated April 16, 2021 which was received by the tenant on that date. The tenant paid the rent in full on April 21, 2021.

The tenant testified that they have issues with making rent payments pursuant to the tenancy agreement due to their fluctuating source of income. The tenant says they issued correspondence to the landlord to inform of the difficulties paying rent by the date due and providing the dates on which rent will be paid. The landlord did not consent to the late rent payments.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice.

In the matter at hand I accept the undisputed evidence of the parties that the tenant was issued a 10 Day Notice on March 25, 2021 and April 16, 2021 and paid the full rent on March 26, 2021 and April 21, 2021 respectively. I find that the full amount of the overdue rent was paid within five days as set out in the *Act*. The 10 Day Notices are therefore cancelled and of no further force or effect.

I note parenthetically that pursuant to section 47(1)(b) of the *Act* a landlord may give notice to end a tenancy if a tenant is repeatedly late paying rent. The issue is expanded upon in Residential Tenancy Policy Guideline 38 which provides that three late payments are sufficient to justify a notice under these provisions. While the landlord has not issued a Notice to End Tenancy for Cause, repeated late payments may give rise to an issuance of a notice.

I find insufficient evidence in support of the portion of the tenant's application seeking an order of compliance. The tenant made no submissions on this point and their evidence consists of correspondence between the parties pertaining to exchange of evidentiary materials. I dismiss this portion of the tenant's claim.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice. The balance of the tenant's application is dismissed without leave to reapply.

I dismiss the landlord's application in its entirety without leave to reapply.

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: May 14, 2021

Residential Tenancy Branch