



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:51 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he received the tenants' application package. He testified that he served the tenants with his evidence package by registered mail (tracking number on the cover of this decision) on July 5, 2021. I find that the tenants are deemed served with this package on July 10, 2021, five days after the landlord mailed it, in accordance with sections 88 and 90 of the Act.

Issues to be Decided

Are the tenants entitled to an order cancelling the Notice pursuant to section 46 of the Act?

If not, is the landlord entitled to:

- 1) an order of possession for non-payment of rent pursuant to section 55(1) of the Act; and
- 2) a monetary order for the rental arrears specified on the Notice pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord and tenant AA entered into a written tenancy agreement starting May 1, 2013. Monthly rent is \$1,947.50 and is payable on the first of each month. Electricity, natural gas, and heat are not included in the rent. The tenants paid the landlord a security deposit of \$950, which the landlord continues to hold in trust for the tenants.

The landlord testified that the tenants did not pay rent when it was due on April 1, 2021. He testified that he sent them emails on April 2, 8, and 9, 2021 requesting that the tenants pay rent and the outstanding utilities. These emails were submitted into evidence.

The landlord served the tenants with the Notice on April 10, 2021 by posting it to the door of the rental unit. It specified an effective date of April 24, 2021. It set out rental arrears as \$1,947.50. It did not specify any utilities owing. He testified that the tenants sent him an e-transfer \$955.93 on April 10, 2021 representing the outstanding amount for the utilities bill. He submitted into evidence a screenshot of the e-transfer from tenant MA on which she wrote "Hello sorry that's the utilities and gas bill".

The landlord testified that the tenants have not paid any portion of April 2021 rent to date. He testified that they have paid rent for May, June, and July 2021, via e-transfer, but that he has issued receipts (which are entered into evidence) upon which he wrote: "this is for use and occupancy only. This does not reinstate the tenancy agreement."

Analysis

I accept the landlord's undisputed testimony that the tenants failed to pay the rent that was due on April 1, 2021. I find that the tenants have not paid any part of April 2021 arrears as of the date of this hearing.

I find that the Notice was validly issued. Accordingly, I dismiss the tenants' application to cancel the Notice.

Sections 55(1) and (1.1) state:

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 Notice complies with section 52.

Pursuant to sections 55(1) I order that the tenants provide the landlord with vacant possession of the rental unit within seven days of being served with this decision and attached order of possession by the landlord.

Pursuant to sections 55(1.1), I order that the tenants pay the landlord \$1,947.50, representing the amount of unpaid rent listed on the Notice which remains outstanding.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary order made above.

Conclusion

I dismiss the tenants' application without leave to reapply.

Pursuant to section 55(1) of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within seven days of being served with a copy of this decision and attached order(s) by the landlord at 1:00 pm.

Pursuant to sections 55(1.1) and 72 of the Act, I order that the tenants pay the landlord \$997.50, representing the amount of arrears owed (\$1,947.50) less the amount of the security deposit (\$950.00).

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: July 27, 2021

Residential Tenancy Branch