



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On August 6, 2021, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 3, 2021.

The matter was set for a conference call hearing. The Tenant and Landlords agents attended the teleconference hearing. The Tenant was assisted by an advocate/ agent.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice dated August 3, 2021, be cancelled?
- Is the tenancy ending and is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in July 2017 and is currently on a month-to-month basis. Rent in the amount of \$750.00 is due to be paid to the

Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement that was prepared in July 2021.

The Landlord testified that the Tenant failed to pay the rent for August 2021 when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2021, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by email, registered mail, and by posting a copy to the Tenant's door. On August 3, 2021 the Landlord emailed the 10 Day Notice, and posted a copy to the Tenant's door.

The 10 Day Notice provides that the Tenant has failed to pay rent in the amount of \$750.00 which was due on August 1, 2021. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Landlord testified that the Tenant paid the rent by e-transfer on August 13, 2021.

The Landlord wants to enforce the 10 Day Notice and end the tenancy because the Tenant did not pay the rent within 5 days of receiving the 10 Day Notice. The Landlord stated that the Tenant informed the Landlord that the rent would be late, and the Landlord gave her a couple extra days to pay the rent before issuing the 10 Day Notice.

The Tenant testified that she received the 10 Day Notice on August 4, 2021. The Tenant disputed the 10 Day Notice on August 6, 2021.

The Tenants agent submitted that the Tenant asked for more time to pay the rent and that at the end of the day the rent was paid on August 13, 2021. The Tenant's agent stated that the tenancy has been ongoing since 2017 and the Landlord used to let the Tenant pay late and it would be unfair to the Tenant to end the tenancy. The Tenant's agent stated that there was a previous dispute hearing that should be considered.

The Landlord stated that the previous hearing is a separate matter and is not relevant to the issuance of the 10 Day Notice.

Neither party provided a copy of a previous dispute resolution proceeding decision.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

Section 46 of the Act provides; if a tenant who has received a notice under this section does not pay the rent within 5 days of receiving the notice, or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice on August 4, 2021.

I find that the Tenant paid the August 2021 rent on August 13, 2021. I find that the rent was paid to the Landlord nine days after the Tenant received the 10 Day Notice. I find that the Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice. I find that there was no legal reason under the Act permitting the Tenant to pay the rent late. The Landlord gave the Tenant an extra day prior to issuing the 10 Day Notice.

I find that any leniency previously given to the Tenant regarding late payment of the rent does not affect the validity of the 10 Day Notice. It should have been clear to the Tenant when she received the 10 Day Notice, that the Landlord was not permitting the August rent to be paid late.

I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice dated August 3, 2021.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content, and I grant the Landlord an order of possession effective December 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective December 31, 2021 after service on the Tenant.

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: December 13, 2021

Residential Tenancy Branch