



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, AAT, LRE

Introduction

On August 30, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, and seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*.

Tenant A.P. attended the hearing; however, she disconnected from the teleconference after two minutes. Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

The Landlord attended the hearing as well, with G.S. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

G.S. advised that the Landlord was never served the Notice of Hearing package by the Tenants, as per Rule 3.1 of the Rules of Procedure (the "Rules"). He stated that the Landlord only found out about the hearing when he contacted the Residential Tenancy Branch.

Given the undisputed evidence that the Tenants did not serve the Notice of Hearing package to the Landlord in accordance with the Rules, the Tenants' Application is dismissed without leave to reapply.

G.S. advised that the Tenants were served the Landlord's evidence by being posted to the Tenants' door on December 15, 2021 as well as by being sent by registered mail on December 24, 2021. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted all of the Landlord's documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on January 1, 2019 and that rent was established at an amount of \$1,600.00 per month. While the tenancy agreement did not indicate when rent was due each month, he testified that there was a verbal agreement that rent was due on the first day of each month. As well, he submitted that the Tenants had established a pattern of paying rent by e-transfer on the first of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

G.S. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on August 25, 2021, by hand. He submitted that the Tenants did not pay any rent for March, April, May, June, July, or August 2021. Thus, the Notice was served for rent owing in the amount of \$9,600.00 on August 1, 2021. As well, he stated that the Tenants have also not paid any rent for September, October, November and December 2021, nor have they paid any rent for January 2022 either.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the

effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I find it important to note that the name of Tenant A.P. is spelled incorrectly when compared to the Application and the tenancy agreement. As well, the Landlord appears to have entered a different address for the Tenants on the Notice when compared to the Application and the tenancy agreement.

Section 68 of the *Act* permits me to amend a Notice that does not comply with Section 52 of the *Act* if I am satisfied that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice. While these mistakes appear to be typographical errors on the part of the Landlord, I note that the Tenants indicated in their Application that part of the reason they disputed the Notice is because of these errors. While I acknowledge that it could be reasoned that the Tenants should have known these were errors, I find these mistakes, especially the incorrectly noted dispute address, to be fatal flaws in this instance. As such, I am not satisfied of the validity of the Notice as it does not comply with Section 52. Therefore, I find that the Notice of August 25, 2021 is of no force and effect.

Section 55 of the *Act* permits an Order of Possession to be granted in the event that the Tenants' Application be dismissed. However, this is permitted in instances when the Notice has been determined to comply with Section 52 of the *Act*. As I have found the Notice to be invalid, an Order of Possession cannot be granted.

The Tenants are cautioned that the *Act* requires rent to be paid when it is due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*. There are very few instances where the Tenants are permitted to withhold the rent and not jeopardize their tenancy. If it is determined that they have withheld the rent illegally, an Order of Possession and a Monetary Order may likely be awarded in favour of the Landlord.

Conclusion

The Tenants' Application is dismissed without leave to reapply. However, based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent of August 25, 2021 to be cancelled and of no force or effect. 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: January 10, 2022

Residential Tenancy Branch