Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kerr Properties 002 Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Manager, ND, and the Tenant, MP, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the 10 Day Notice on November 10, 2021 with a witness. The Tenant confirmed receipt of the 10 Day Notice on November 10, 2021. I find that the 10 Day Notice was served on the Tenant on November 10, 2021 pursuant to Section 88(a) of the Act.

The Tenant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing by using a permitted email address for service purposes on November 17, 2021 (the "NoDRP package"). The Landlord confirmed that the Tenant has served documents to the Landlord via email before she

started with the company. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package on November 20, 2021 in accordance with Sections 43(2) and 44 of the Residential Tenancy Regulation.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on August 15, 2019. Monthly rent is $1,950.00 plus $25.00 for her parking spot payable on the 15th day of each month. A security deposit of $975.00 and a pet damage deposit of $975.00 were collected at the start of the tenancy and are still held by the Landlord.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed $5,000.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 20, 2021.

The Tenant applied for dispute resolution and paid the $100.00 filing fee.

At the outset of the hearing, the Landlord testified that the Tenant was in arrears of her rental payments for the amount on the 10 Day Notice, plus for December 2021, January 2022 and February 2022; however, the parties had reached a settlement amount of $10,850.00. The Landlord stated that if the Tenant paid this amount, the Landlord would cancel the 10 Day Notice.

The Landlord testified that the Tenant paid $10,850.00 on February 17, 2022 and the Landlord agreed to cancel the 10 Day Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Prior to the hearing, the parties agreed to a settlement amount, the Tenant paid the settlement amount, and the Landlord agreed to cancel the 10 Day Notice. Based on the testimony of both parties on this matter, I find the outstanding rent amount has been settled and the Tenant is paid up. The Landlord confirms to cancel the 10 Day Notice, and I will do this. This tenancy shall continue until it is ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold $100.00 from next month's rent due to the Landlord.

Conclusion

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

The Tenant may withhold $100.00 from next month's rent to recover her application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 01, 2022

Residential Tenancy Branch