



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 Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for 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.

The hearing was conducted via teleconference. The Tenants, IP and CP, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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 Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The Landlord personally served the 10 Day Notice on February 1, 2022. The Tenants confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenants on February 1, 2022 pursuant to Section 88(a) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 11, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants uploaded the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this

decision. I find that the Landlord was deemed served with the NoDRP package on February 16, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?

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.

The Tenants testified that their periodic tenancy began approximately in 2014. Monthly rent is \$1,300.00 payable on the first day of each month. A security deposit of \$640.00 was collected at the start of the tenancy.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$3,060.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 11, 2022.

The Tenants stated they got behind in their rent payments due to COVID restrictions. They contacted the Landlord and the parties worked out a payment plan. They were surprised the Landlord issued the 10 Day Notice. The Tenants testified that as of April 30, 2022, they are all caught up on their rent payments. On April 30, 2022, CP stated she paid the remainder owing for April 2022, and she paid for May 2022's rent.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As a reminder to the Tenants, 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.

The Tenants fell behind on their rental payments, and they worked out a payment plan with the Landlord. They testified that now they are all caught up on their rent payments. The Landlord did not attend the hearing to provide evidence about why he was seeking to end the tenancy. I find based on the Tenants' testimony that the Tenants are not outstanding on their rent payments. The Landlord has not proven on a balance of probabilities that this tenancy must end due to unpaid rent. The Landlord's 10 Day Notice is cancelled and the tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The Tenants' application to dismiss the 10 Day Notice is granted.

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: May 09, 2022

Residential Tenancy Branch