



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On December 25, 2022, 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 December 20, 2022.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

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.

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

- Is the Tenancy ending due to unpaid rent?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Tenant testified that her tenancy began in July 2020. The Landlord purchased the rental property in 2021 and inherited the Tenant and tenancy. The Tenant testified that

her rent is due to be paid to the Landlord between the 1st and 5th day of each month. She testified that the original Landlord did not prepare a written tenancy agreement.

The Landlord confirmed that there was no tenancy agreement available when he purchased the property. He testified that he met with all the occupants of the residential property on June 30, 2022 and gave each tenant a letter stating that rent will be due on the 1st day of each month. The Tenant confirmed that she received the letter and understood that rent was due by the first day of each month. She stated that she told the Landlord about her paydays not always being by the first of each month.

The Landlord and Tenant agreed that rent in the amount of \$925.00 is due to be paid to the Landlord each month.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement for the month of December 2022. The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 20, 2022, ("the 10 Day Notice").

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$925.00 which was due on November 30, 2022. The 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 Tenant testified that she found the 10 Day Notice attached to her door on December 20, 2022. The Tenant disputed the 10 Day Notice on December 25, 2022 within the required time period.

The Landlord testified that the Tenant did not pay the \$925.00 rent due under the tenancy agreement and 10 Day Notice within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant has not paid the rent owing for December 2022 and has not paid the rent owing for January 2022. The Landlord seeks to enforce the 10 Day Notice and wants an order of possession for the rental unit and a monetary order for unpaid rent.

The Tenant provided testimony confirming that she has not paid the rent owing for December 2022. She stated that she got sick and was in the hospital from December 1, 2022 to December 11, 2022. She stated that she was not working and was unable to

pay the rent. She stated that there is no legal reason present permitting her to not pay the rent.

Analysis

Section 26 of the Act states 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice on December 20, 2022 and failed to pay the rent within five days of receiving the 10 Day Notice. I find that the rent was due by the 1st day of each month. Even if it was due between the 1st and 5th day of the month as stated by the Tenant, the rent was not paid by December 20, 2022 when the Landlord issued the 10 Day Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. 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 December 20, 2022.

Under section 55 of the Act, when a tenants 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 and a monetary order for the unpaid rent.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, 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.

I grant the Landlord a monetary order in the amount of \$925.00 for unpaid December 2022 rent.

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 Landlord is granted an order of possession effective two (2) days after service on the Tenant and a monetary order for unpaid December 2022 rent.

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 30, 2023

Residential Tenancy Branch