



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On January 15, 2023, 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 January 10, 2023.

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. The parties were informed that recording the hearing is not allowed.

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 January 10, 2023, be cancelled?
- Is the Landlord entitled to an order of possession for the rental unit and a monetary order for unpaid rent?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 1, 2020 as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,526.00 is due to be paid to the Landlord by the first day of the month. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant failed to pay the rent for January 2023 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 January 10, 2023, ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the 10 Day Notice by attaching it to the Tenant's door on January 10, 2023. The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$1,516.20 which was due on January 1, 2023. The effective date of the 10 Day Notice is January 23, 2023. The Landlord and Tenant provided a copy of the 10 Day Notice.

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 disputed the 10 Day Notice on January 15, 2023, within the required time period.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of him receiving the 10 Day Notice. The Landlord testified that the Tenant paid the Landlord \$1,500.00 on January 27, 2023. The Landlord testified that the Tenant owes rent arrears of \$118.67 up to and including rent for February 2023.

The Landlord wishes to end the tenancy and is seeking an order of possession for the rental unit and a monetary order for \$118.67 in unpaid rent.

In reply, the Tenant testified that he received the 10 Day Notice on January 10, 2023. The Tenant testified that he paid \$1,500.00 to the Landlord on January 27, 2023, and acknowledged that he did not pay the rent within five days or pay the full amount owing.

The Tenant stated that the rent was not paid because he did not have the funds, rather than any legal reason to withhold payment of rent. The Tenant stated he does not dispute the Landlord's claim that he owes \$118.67 in unpaid 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.

Section 46 of the Act provides if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 55 of the Act provides if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy regarding non payment of rent, and the director dismisses the tenant's application or upholds the landlord's notice; the director must grant to the landlord an order of possession of the rental unit and an order requiring the payment of the unpaid rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, 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 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. In accordance with section 68(2) of the Act, I find that the tenancy has ended effective the date of this hearing.

I dismiss the Tenant's application to cancel the 10 Day Notice dated January 10, 2023. 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.

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 find that the Tenant owes the Landlord unpaid rent in the amount of \$118.67. I grant the Landlord a monetary order for \$118.67.

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 tenancy has ended. The Landlord is granted an order of possession effective two (2) days after service on the Tenant and the Landlord is granted a monetary order for unpaid rent in the amount of \$118.67.

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: February 27, 2023

Residential Tenancy Branch