



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, LRE, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenants applied on January 11, 2023 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 5, 2023 (the 10 Day Notice);
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit, site, or property, having contacted the landlord in writing;
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site;
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

The hearing began at 11:00 a.m. The tenants did not attend, though the teleconference line remained open for 10 minutes. The landlord's representative ("the landlord") was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, or dismiss the application with or without leave to re-apply.

The landlord testified that as they believed the tenants still reside in the unit, the landlord is seeking an order of possession as well as unpaid rent.

Preliminary Matters

As the tenants did not attend the hearing, and the onus is on them to prove the following claims, I dismiss the following claims with leave to reapply:

- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit, site, or property, having contacted the landlord in writing;
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site; and
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement.

As the tenants did not attend the hearing, their claim to recover the filing fee is dismissed without leave to reapply.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, despite the fact that this is the tenants' application, the landlord bears the evidentiary burden to prove that the 10 Day Notice is valid.

Issue to be Decided

Is the landlord entitled to an order of possession and a monetary order due to non-payment of rent?

Background and Evidence

The landlord confirmed the following particulars regarding the tenancy. It began November 1, 2021; rent is \$4,000.00, due on the first of the month; and the tenants paid a security deposit of \$2,000.00, which the landlord still holds.

The landlord testified the 10 Day Notice was served on the tenants on January 8, 2023 to an email address agreed upon for service. The landlord referred me to the tenants' application, which indicates the Notice was sent to a pre-agreed email.

A copy of the 10 Day Notice is submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the grounds for ending the tenancy, and is in the approved form. The Notice indicates the tenancy is ending because the tenants failed to pay rent in the amount of \$4,000.00 due on January 1, 2023. The 10 Day Notice does not state an effective date.

The landlord testified that rent is also owing for February 2023.

Analysis

Pursuant to section 46 (1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the undisputed testimony of the landlord, I find the 10 Day Notice served on the tenants by email on January 8, 2023, in accordance with section 88 of the Act. As the tenants' application indicates the Notice was submitted as evidence on January 10, 2023, I find the tenants received it on that date.

Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

As the 10 Day Notice does not list an effective date, I find the Notice does not meet the form and content requirements of section 52 of the Act.

The 10 Day Notice is cancelled, and the landlord is not entitled to an order of possession or unpaid rent.

The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The 10 Day Notice is cancelled. The tenancy will continue until it is 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: March 13, 2023

Residential Tenancy Branch