



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 9, 2023 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 3, 2023 (the "10 Day Notice").

The Tenants and the Landlord's Agents P.M., G.L., and H.P. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agents confirmed receipt of the Tenants' Application. The Landlord's Agent stated that they served the Tenants with their evidence in response to the Application. When asked if the Tenants' received the Landlord's evidence, the Tenants responded, "I think so". I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice pursuant to Section 46 of the Act?
2. If the Tenants are not successful, Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the Act?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the Act?

Background and Evidence

The parties testified and agreed to the following terms of the tenancy; the tenancy started on July 1, 2019. Since January 1, 2023, the Tenants are required to pay rent in the amount of \$1,242.36 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 which the Landlord continues to hold. The Tenants continue to occupy the rental unit.

The Landlord's Agents confirmed that they served the Tenants with the 10 Day Notice on February 3, 2023 by posting it to the Tenants' door on February 3, 2023. The 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$777.52. When the Landlord's Agents were asked how they came up with that amount, the Landlord's Agents referred to a rent ledger. I note that there was no rent ledger submitted into evidence for my consideration.

The Landlord's Agents confirmed that the Tenants paid rent in the amount of \$464.84 January 2023 rather than \$1,242.36 which was due. As such, the Tenants were short on their rent in the amount of \$777.52 for January 2023. The Landlord's Agents stated that on February 1, 2023 the Tenants paid rent in the amount of \$1,959.52. This brought the amount of rent owing by the Tenants to the Landlord to \$60.36 as of February 1, 2023.

While the Landlord's Agents served the Tenants with the 10 Day Notice on February 3, 2023 which indicated the Tenants owed rent in the amount of \$777.52, the Landlord's Agents confirmed during the hearing that the amount owing on the 10 Day Notice should have been \$60.38 at the time of serving the 10 Day Notice.

The Tenants confirmed having received the 10 Day Notice posted to their door, however, could not recall what date. The Tenants did not dispute that they had an outstanding balance of rent owed to the Landlord in the amount of \$60.38 at the time of

the 10 Day Notice being served, however, the Tenants referred to a previous Dispute Resolution Decision dated January 25, 2023 in which the Tenants were successful in their Application to dispute a previous 10 Day Notice. The File Numbers relating to the January 25, 2023 Decision are noted on the cover page of this decision. I note that the January 25, 2023 Decision states that:

“As the Tenants were substantially successful with their application, I grant the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.”

As such, the Tenants feel as though they should have a rent credit and were not in arrears on rent at the time of the 10 Day Notice dated February 3, 2023 being served to them. The Landlord's Agents confirmed during the hearing that the Tenants have not yet been credited with the recovery of the \$100.00 filing fee.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

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 states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agents testified that they served the Tenants with the 10 Day Notice by posting it to the Tenants' door on February 3, 2023. As the Tenants confirmed having received the 10 Day Notice but could not recall when, I find pursuant to Section 88 and 90 of the Act that the 10 Day Notice is deemed to have been received by the Tenants three days later, on February 6, 2023.

After receiving the 10 Day Notice, the Tenants made an Application to cancel the 10 Day Notice on February 9, 2023. I find that the Tenants have submitted their Application within the 5 day time limit permitted under the Act.

I accept that at the time of the 10 Day Notice being served, the Tenants had an outstanding balance of rent owing to the Landlord in the amount of \$60.36. I find that after receiving the January 25, 2023 Decision, the Tenant were entitled to deduct \$100.00 from one future rent payment. As such, I find that the Tenants had a \$100.00 rent credit which could have been applied to February 2023 rent. As such, I find that there was no rent owing to the Landlord at the time of the 10 Day Notice being served to the Tenants on February 3, 2023. I find that the Tenants still have a rent credit in the amount of $(\$100.00 - \$60.36 = \$39.64)$.

As there was no amount of rent owing to the Landlord as of February 3, 2023 when the Landlord issued the 10 Day Notice, I find that the 10 Day Notice dated February 3, 2023 is cancelled. I order that the tenancy continue until it is ended in accordance with the Act.

During the hearing, the Landlord's Agents referred to other missed rent payments that have come about more recent months. I find that the Landlord is at liberty to issue a new 10 Day Notice for any unpaid rent that has occurred after February 2023, while considering that the Tenants are still entitled to a rent credit in the amount of \$39.64 for remaining portion of their previously awarded filing fee.

Conclusion

The Tenants' Application is successful. The 10 Day Notice dated February 3, 2023 is cancelled. The tenancy shall 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: June 06, 2023

Residential Tenancy Branch