



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 1, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated February 28, 2021.
- an order granting a rent reduction;
- an order for regular repairs;
- an order to allow a sublet;
- an order that the Landlord comply with the Act;
- an order to restrict or suspend the Landlord's right to enter.

The Tenant, the Landlord, and the Landlord's Agents K.C. and J.C. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues relating to service of the above-mentioned documents, I find they were sufficiently served pursuant to 71 of 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for an order granting a rent reduction, an order for regular repairs, an order to allow a sublet, an order that the Landlord comply with the Act, an order to restrict or suspend the Landlord's right to enter are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on September 15, 2018. Currently, rent in the amount of \$2,100.00 is due to be paid to the Landlord by the first day of each month. A security deposit in the amount of \$1,050.00 was paid to the Landlord which the Landlord continues to hold. The parties agreed that the Tenant continues to occupy the rental unit.

The Landlord stated that he served the Tenant in person with the 10 Day Notice on February 28, 2021 with an effective vacancy date of March 11, 2021. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$7,840.00. The Landlord provided a detailed rental ledger which outlines the amount of unpaid rent from January 2020 to February 1, 2021. The Landlords stated that the amount of rent listed on the 10 Day Notice is less than the true amount of unpaid rent owed to the Landlord.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice. The Tenant confirmed having received the notice on February 28, 2021 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord testified that after serving the 10 Day Notice the Tenant paid \$2,100.00 on March 27, 2021 however, have also failed to pay rent for the month of April 2021 and made partial rent payments in May in the amount of \$1,510.00. The Landlord stated that currently, the Tenant has an outstanding balance of unpaid rent in the amount of \$28,865.00.

In response, the Tenant acknowledged that she owed atleast \$7,840.00 to the Landlord at the time of the 10 Day notice being served to her. The Tenant confirmed that she did not pay the full amount of outstanding rent to the Landlord within the 5 days required. The Tenant stated that she is on disability and is unable to pay the rent to the Landlord. During the hearing the Tenant agreed that she owes the Landlord \$28,865.00 in unpaid rent. During the hearing, the Tenant stated that she was surprised that it took the Landlord this long to take action on the unpaid rent.

Analysis

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

Section 26 of the Act states that a Tenants 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.

In relation to the 10 Day Notice dated February 28, 2021 the Landlord testified he served the 10 Day Notice in person, to the Tenant on February 28, 2021. The Tenant acknowledged receipt on this date and in this manner. Therefore, pursuant to section 88 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

I accept that the Tenant agreed that she owed but did not pay the full amount that was indicated on the 10 Day Notice to the Landlord within the 5 days required after receiving the 10 Day Notice. As such, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy. As such, I dismiss the Tenant's Application to cancel the 10 Day Notice without leave to reapply.

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, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible. 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.

Conclusion

The Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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 08, 2021

Residential Tenancy Branch