



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MGMT. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application: CNR
Landlord's application: OPR-DR MNR-DR FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) from both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 4, 2022 (10 Day Notice). The landlord applied for an order of possession based on the 10 Day Notice, for a monetary claim of \$1,794.97 and to recover the cost of the filing fee.

The tenant and an agent for the landlord, JK (agent) attended the teleconference hearing. The parties were affirmed and both parties were permitted to ask questions. The agent confirmed that they received the Hearing Package and documentary evidence from the tenant and had the opportunity to review that evidence. The agent was unable to prove service of the landlord's Hearing Package and the tenant stated that they were not served. As a result, I dismiss the landlord's application with leave to reapply due to a service issue.

Preliminary and Procedural Matters

At the outset of the hearing, and by consent of the parties, the landlord name was changed from an agent to the landlord corporate company name, LPML. This amendment was made pursuant to section 64(3) of the Act.

Both parties confirmed their email addresses during the hearing.

The tenant confirmed that they have not provided their written forwarding address as of the date of the hearing, July 28, 2022 and as such, I would not be considering the security deposit in the hearing today as the tenant no longer occupies the rental unit.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on June 1, 2020. Monthly rent was originally \$1,400 and the parties agreed that it was increased to \$1,421.

A copy of the 10 Day Notice was submitted and indicates that \$1,694.97 was owed as of April 1, 2022. The 10 Day Notice is dated and signed and was dated April 4, 2022 with an effective vacancy date of April 15, 2022. The tenant confirmed that they received the 10 Day Notice the evening of April 4, 2022. The tenant filed their application to dispute the 10 Day Notice on April 5, 2022.

The tenant admitted during the hearing that full rent was not paid for April 2022. The tenant said she paid \$900, and the Ministry paid \$450, which together totals \$1,350. The agent stated that they were not paid \$900 from the tenant. Regardless, the monthly rent due was \$1,421 and as such, I find the 10 Day Notice to be valid, which I will address further below.

The agent stated that an order of possession was not required as the landlord considered the rental unit abandoned as of May 21, 2022. The tenant stated that they have not returned the rental unit keys. The agent stated that new tenants moved into the rental unit as of July 1, 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I have reviewed the 10 Day Notice and find it complies with section of the Act. Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the 10 Day Notice within five (5) days.

When a 10 Day Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent. I have considered the testimony of both parties and find the tenant admitted to not paying the entire \$1,421 in unpaid April 2022 rent. I make no finding on the exact money owed as I find the landlord did not submit a tenant ledger for my consideration to support the amount of \$2,215.97 mentioned by the agent during the hearing. **I dismiss** the tenant's application seeking cancellation of the 10 Day Notice. The tenant ought to have paid the full monthly rent and failed to do so.

Given the above, I find the tenancy ended on **April 15, 2022**, which was the effective vacancy date listed on the 10 Day Notice. I do not grant an order of possession as the rental unit was deemed abandoned as of May 21, 2022 under the Act, and new tenants already occupy the rental unit as of July 1, 2022.

Although section 55(1.1) indicates I must grant an order requiring the payment of the unpaid rent, I find am not satisfied on the exact amount owing as I find the agent failed to submit a tenant ledger to support the amount they indicate as owed. As such, I grant the landlord leave to reapply for a monetary order for unpaid rent.

The tenant had their filing fee waived and I do not grant the landlord their filing fee due to the service issue described above.

Conclusion

The tenant's application is dismissed without leave to reapply.

The tenancy ended on April 15, 2022.

The landlord may reapply for a monetary order for unpaid rent.

The decision will be emailed to both parties.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 28, 2022

Residential Tenancy Branch