



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, RP, PSF, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Ten Day Notice to End Tenancy for Unpaid Rent (Ten Day Notice to End Tenancy); for an Order requiring the Landlord to make repairs; for an Order requiring the Landlord to provide services or facilities; and to recover the fee for filing this Application for Dispute Resolution.

Preliminary Matter #1

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

I find that the most urgent issue in dispute is possession of the rental unit and I will, therefore, consider the Tenant's application to set aside a Ten Day Notice to End Tenancy.

The Tenant's application for an Order requiring the Landlord to make repairs and for an Order requiring the Landlord to provide services or facilities are not directly related to the continued possession of the rental unit and should, in my opinion, be severed from this Application for Dispute Resolution. These issues are dismissed, with leave to re-apply. The Tenant retains the right to file another Application for Dispute Resolution to address these outstanding issues.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy be set aside?

Background and Evidence

The Tenant stated that:

- she has been unable to serve the Landlord with the Application for Dispute Resolution;
- she did not have a service address for the Landlord until she received the Ten Day Notice to End Tenancy that is the subject of this dispute;
- sometime in early September of 2016 she went to the service address on the Ten Day Notice to End Tenancy and was told that neither person identified as the Landlord on the Notice is associated to that service address;
- on September 11, 2016 she sent the Application for Dispute Resolution to the service address on the Ten Day Notice to End Tenancy, via registered mail;
- the package she sent on September 11, 2016 was returned to her by Canada Post;
- after she received the Ten Day Notice to End Tenancy she attempted to contact an agent for the Landlord, whom she knows only as "M";
- "Michael" has not responded to messages left for him and she is not certain he is still acting as an agent for the Landlord;
- she does not have a service address for "M"; and
- the parties have been discussing having the Tenant repair the rental unit in exchange for rent.

The Tenant submitted a photocopy of the envelope that was mailed to the service address. This envelope has a note written on it that reads "No such person".

Analysis

During the hearing the Tenant was advised that I could not proceed with the hearing as I was not satisfied that the Landlord was served with the Application for Dispute Resolution in accordance with section 89 of the *Residential Tenancy Act (Act)*. This decision was based on the evidence that shows the Landlord is not associated to the service address provided on the Ten Day Notice to End Tenancy.

Upon further consideration I concluded that the Landlord has been sufficiently served with notice of the Tenant's intent to dispute the Ten Day Notice to End Tenancy, pursuant to section 71(2)(c) of the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Application for Dispute Resolution was mailed to the service address provided on the Ten Day Notice to End Tenancy. Although I recognize it is possible that the Landlord provided the Tenant with an inaccurate service address when the Tenant was served with the Ten Day Notice to End Tenancy, I find that mistake was made at the peril of the Landlord and should not disadvantage the Tenant.

I find it is also possible that the Application for Dispute Resolution has been served to a proper service address for the Landlord and that the Landlord is simply avoiding service, in which case the Application would be deemed served in accordance with section 90 of the *Act*.

When a tenant disputes a notice to end tenancy that has been served by a landlord, the onus is on the landlord to establish the merits of the notice to end tenancy. As the Landlord has not attended the hearing to support the Ten Day Notice to End Tenancy that is the subject of this dispute, I find that there is insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 46 of the Act. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy.

I find that the Tenant's application has merit and that she is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Notice to End Tenancy that is the subject of this dispute has been set aside. The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy for Unpaid Rent if the parties are unable to resolve the dispute regarding rent.

The Tenant has established a monetary claim of \$100.00 in compensation of the fee paid for filing this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Tenant to reduce one monthly rent payment by \$100.00 in full satisfaction of this monetary claim.

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: November 07, 2016

Residential Tenancy Branch