



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The landlord did not participate in the conference call hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on October 29, 2016 she forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on November 3, 2016, the fifth day after its registered mailing.

Preliminary Issue – More Time

The tenant confirmed receipt of the landlord's 10 Day Notice, dated October 24, 2016 by way of registered mail on October 28, 2016.

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days after receiving the notice, pay the outstanding rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 10 Day Notice has been duly served on October 28, 2016 the tenant was required to file her application to dispute the 10 Day Notice no later than November 2,

2016. The tenant filed her application on November 2, 2016, within the allotted time. Therefore I dismiss the tenant's application for more time to make an application to cancel the landlord's 10 Day Notice.

Preliminary Issue – Repair Claim

With respect to the tenant's repair claim, I find the RTB Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenant's application is the request to cancel the 10 Day Notice. Because the tenant's claim for repair is made under section 32 of the *Act*, I find this part of the application is distinct from the tenant's request that the 10 Day Notice, be cancelled pursuant to section 46 of the *Act*.

Accordingly I find the repair portion of the tenant's application must be severed and the repair claim must be dealt with separately through an application under 32 of the *Act*. Therefore the portion of the tenant's application seeking a repair order is dismissed.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

As per the testimony of the tenant the tenancy began on March 20, 2015. Rent in the amount of \$875.00 is payable on the first of each month. The tenant remitted \$437.50 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the landlord's 10 Day Notice, dated October 24, 2016 by way of registered mail on October 28, 2016. The tenant testified that on this same date, October 28, 2016, she forwarded the outstanding October rent and November rent via registered mail to the landlord.

Analysis

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for

dispute resolution with the Residential Tenancy Branch. Based on the undisputed testimony of the tenant, I find the tenant paid the outstanding rent within the five days allowable under the *Act* and therefore find the 10 Day Notice has no effect.

Conclusion

The tenant's claim for a repair order is dismissed with leave to reapply.

The tenant's application to cancel the 10 Day Notice is upheld. The tenancy continues 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: December 20, 2016

Residential Tenancy Branch