



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC, RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated February 5, 2017 for non-payment of utilities.
- b. An order that the landlord make repairs to the rental unit.
- c. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- d. An order that the landlord comply with the Act, regulation or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. The parties failed to provide a copy of the Notice to End Tenancy or any other documents. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on February 5, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated February 5, 2017?
- b. Whether the tenants are entitled to a repair order?
- c. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

- d. Whether the tenants are entitled to an order that the landlord comply with the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on April 5, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenants are also required to pay 40% of the utilities. The tenants did not pay a security deposit.

The Notice to End Tenancy alleged that the tenants failed to pay the utilities and the sum of \$294.75 is owed. The tenants have since paid the utilities and the landlord has reinstated the tenancy.

Analysis:

As the landlord has reinstated the tenancy I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the other claims in the Application for Dispute Resolution as the tenant failed to provide sufficient evidence to prove those claims.

As a courtesy to the parties I have included the section 46(6) of the Residential Tenancy Act which explains what is required before a landlord can serve a Notice to End Tenancy for non-payment of utilities.

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. (my emphasis)

Conclusion:

In summary I order that the 10 day Notice to End Tenancy be cancelled. All remaining claims are dismissed.

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: March 08, 2017

Residential Tenancy Branch