



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, RR, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated October 14, 2017 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 48 minutes. The two tenants, male tenant ("tenant") and "female tenant" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant did not testify at this hearing and the tenant confirmed that he had authority to speak on her behalf as an agent.

The hearing began at 9:30 a.m. At 9:52 a.m., I disconnected from the hearing due to extensive background noise on the telephone line where I could not hear the tenant but I returned to the hearing immediately and the tenant was still in the conference and continued with his testimony when I returned on the line. The hearing ended at 10:18 a.m.

The tenant testified that he personally served the landlord with a copy of the tenants' application for dispute resolution hearing package on October 20, 2017, which includes an amendment to the tenants' application asking for recovery of the \$100.00 filing fee. In accordance with section 89 of the *Act*, I find that the landlord was personally served with the tenants' application on October 20, 2017.

The tenant confirmed that the female tenant personally received the landlord's 10 Day Notice on October 14, 2017. The effective move-out date on the notice is October 24, 2017. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 10 Day Notice on October 24, 2017.

During the hearing, the tenant confirmed that he did not provide a monetary order worksheet or any details with respect to the tenants' claims for a rent reduction or requesting orders for the landlord to comply or provide services and facilities. I notified the tenant that he was required to provide sufficient particulars as per section 59(2)(b) of the *Act*, in order for the landlord to have notice and prepare for the case to meet. For the above reasons, I informed the tenant that all claims except for cancellation of the 10 Day Notice and recovery of the filing fee, were dismissed with leave to apply. I find no prejudice to the landlord in allowing the tenants to reapply for this relief, because the landlord did not attend this hearing.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on December 15, 2008 for a fixed term of one year, after which it became a month-to-month tenancy. Monthly rent in the amount of \$1,926.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The tenant claimed that the landlord issued the 10 Day Notice in October 2017, for unpaid rent of \$1,926.00 from eleven months prior on December 1, 2016. He said that

he usually pays rent in advance by cheque but that he got some information from the landlord's daughter that the rental unit would be foreclosed and the landlord was not using the tenants' rent money properly. The tenant said that someone gave him bad information to withhold the rent in this situation and he initially listened. He then claimed that he realized that he should have paid the rent so he went to the bank, withdrew \$2,140.00 in cash and gave \$1,940.00 to the landlord by December 5, 2016. He provided bank documents showing that \$2,140.00 total was withdrawn in December 2016 in order to pay the rent.

The tenant maintained that the 10 Day Notice was also issued for \$7,082.05 in utilities due by October 14, 2017. The tenant claimed that water utilities have always been included in the tenants' rent and that the rent was specifically increased in order to account for this sometime in 2009 or 2010. The tenant said that the rent was originally \$1,850.00 and then increased to \$1,926.00 in order to account for \$60.00 roughly per month in water utilities. He stated that the tenants do not owe the above amount for utilities as separate from rent because they are included.

Analysis

In accordance with section 46(4) of the *Act*, the tenants must file their application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on October 14, 2017 and filed their original application to dispute it on October 16, 2017 and then amended their application on October 19, 2017. Accordingly, both of the tenants' original and amended applications are within the five day time limit under the *Act*.

Where tenants apply to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord did not appear at this hearing to provide evidence. The landlord did not meet his onus of proof.

The tenants provided undisputed evidence at this hearing. They provided bank documents from December 2016 to show that they withdrew cash of \$2,140.00 in order to pay the landlord \$1,940.00 for rent in December 2016, which is more than the full rent due of \$1,926.00 and is prior to the notice even being issued.

I also accept the tenant's testimony that the water utilities are included in monthly rent, which was increased from \$1,850.00 to \$1,926.00 in order to account for the water bills. Therefore, I find that the tenants do not owe utilities of \$7,082.05 to the landlord.

Accordingly, I find that the tenants do not owe water utilities in addition to rent for this tenancy because it is included in their monthly rent.

For the above reasons, the landlord's 10 Day Notice, dated October 14, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were partially successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the landlord's 10 Day Notice. The landlord's 10 Day Notice, dated October 14, 2017, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to reduce their future monthly rent by \$100.00 for this rental unit and this tenancy, to account for the monetary award issued against the landlord for the application filing fee.

The remainder of the tenants' application is dismissed with leave to reapply.

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: January 08, 2018

Residential Tenancy Branch