



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, PSF, MNDC, LA, LRE, OLC, FFT

Introduction

On May 23, 2018, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the following relief:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.
- for an order for the Landlord to make emergency repairs.
- for an order for the Landlord to provide services or facilities required by law.
- for money owed or compensation for damage or loss.
- for authorization to change the locks.
- to suspend or set conditions on the Landlords right to enter.
- for the Landlord to comply with the Act.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for dispute resolution on two previous occasions and the parties attended hearings on February 1, 2018, and June 19, 2018.

In the Decision dated February 19, 2018, the Arbitrator's decision included the following orders:

- For the Landlord to allow the Tenant access to the laundry unit a minimum of two regular days per week for a minimum of six hours per day.
- For the parties to arrange a mold inspection on or before April 30, 2018, and for the parties split the cost of the inspection on a 50/50 basis.
- For the Landlord to make investigation and repair as needed to the oven and stove by March 31, 2018.
- For the Landlord to pay the Tenant \$190.00 for the cost of laundry expenses.

The Arbitrator granted the Tenant a monetary order in the amount of \$1,011.65 for an overpayment of rent, laundry costs, and the filing fee.

In the Decision dated June 29, 2018, the Arbitrator's decision includes the following findings and orders:

The Landlord failed to comply with the order made by the Arbitrator in the Decision dated February 19, 2018, by not giving the Tenant access to the Laundry unit a minimum of 2 regular days for a minimum of 6 designated hours each day. The Arbitrator granted the Tenant \$575.00 for the cost of the laundry.

I order the Landlord to comply with the orders previously made, immediately and without any further delay.

The Arbitrator authorized the Tenant to deduct the amount of \$675.00 from a future rent payment. The Arbitrator granted leave for the Tenant to apply for compensation for any further losses including a rent reduction for services not rendered.

In the current application before me, I note that the Tenant applied for dispute resolution on May 23, 2018, which was 27 days before the hearing for his previous application. The Tenant's current application contains a request for relief for many of the same issues that were previously heard. I note that the Tenant's current application was

made prior to the Arbitrators order that the Landlord to comply with the orders previously made, immediately and without any further delay.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to non-payment of rent. The previous monetary amounts granted to the Tenant in the previous hearings will be considered in determining whether or not the rent was paid. The remainder of the Tenant's claims are dismissed with leave to reapply.

Issue to be Decided

- Is the tenancy ending due to non-payment of rent?

Background and Evidence

The parties testified that the tenancy began in December 2013, on a month to month basis. In a previous Decision, the rent was found to be \$746.95 per month to be paid on or before the 15th day of each month.

The Landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the Tenant by posting it to the Tenants' door on May 17, 2018.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$646.95 which was due on May 15, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the 10 Day Notice posted to his door sometime after May 17, 2018. The Tenant disputed the 10 Day Notice on May 23, 2018, within the required timeframe.

The Landlord testified that since he had not received the rent payment by May 17, 2018, he issued the 10 Day Notice. He testified that on May 31, 2018, the Landlord finally received the rent owing for May 2018.

The Landlord testified that he received the rent via registered mail. He testified that there was no mail notification left on his door which delayed the receipt of the mail. The Landlord testified that there is a no contact order in place so the Landlord did not contact the Tenant to inquire about the missing rent payment.

The Landlord submitted that the Tenants are not acting in good faith by paying he rent on time. The Landlord testified that he is frustrated by the Tenants actions where it appears they are intentionally paying the rent late.

In response, the Tenant testified that he sent the rent payment using registered mail so that he would have a record of proof of payment.

The Tenant testified that he has since paid the rent by placing the rent cheque in the Landlord's mailbox. The Tenant indicated he would continue to pay the rent by this means.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 90 of the Act provides that a document given or served in accordance with section 88 or 89, unless earlier received, is deemed to be received on the 5th day after it is mailed.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I accept the Tenant's testimony that they paid the rent that was due on May 15, 2018, by sending the Landlord a cheque by registered mail. The Landlord is deemed to have received the cheque on the fifth day after it was mailed.

Since I find that the rent was deemed received on May 20, 2018, there is insufficient evidence from the Landlord to establish that the rent payment was received more than five days after the Tenants received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 17, 2018.

While I find that the rent was received within five days after the Tenants received the 10 Day Notice, I find that the rent payment for May 2018, was five days late. The Tenants are cautioned that paying the rent using registered mail may put their tenancy at risk. The Tenant's application was partly successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 17, 2018, issued by the Landlord is set aside.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' application is successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 17, 2018, is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant has leave to reapply for compensation for any further losses including a rent reduction for services not rendered.

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: July 24, 2018

Residential Tenancy Branch