



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The landlord did not participate in the conference call hearing, which lasted approximately 10 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 the tenant's application for dispute resolution and supporting documents (the "application") were left in the landlord's office mailbox. The tenant could not specify the specific date of service. Although the tenant could not specify a date of service, the file before me contains evidence submitted by the landlord 16 days prior to the hearing. For this reason, I find that the landlord has been deemed served with the application and evidence.

Preliminary Issue - Withdrawal

At the outset of the hearing the tenant indicated that he seeks to withdraw his entire application. The tenant explained that the landlord and tenant have entered into discussions in which the landlord has indicated that he is willing to work with the tenant regarding late rent payments.

Under the RTB Rules of Procedure section 5.0.1 a tenant may not withdraw an application to cancel a Notice to End Tenancy unless the tenant has the landlord's written consent to withdraw the application.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld.

Accordingly, I am prepared to allow the tenant to withdraw the emergency repair portion of his claim; however, based on the above, I do not permit the tenant to withdraw his application to cancel the 10 Day Notice.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The tenant testified that this tenancy began in May of 2016 on a month-to-month basis. Rent in the amount of \$700.00 is payable on the first of each month. The tenant remitted \$350.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 10 Day Notice on June 13, 2018.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within time, the landlord bears the burden to prove the grounds for the 10 Day Notice.

The tenant disputed the 10 Day Notice within five days. Specifically, he received the 10 Day Notice on June 13, 2018 and filed his application on June 14, 2018. Because the landlord did not attend the hearing I find he has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 10 Day Notice.

Conclusion

The tenant's claim for emergency repairs has been withdrawn; therefore no further action is required in regards to this portion of the claim.

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: August 09, 2018

Residential Tenancy Branch