



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, RP, FFT

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 Utilities (the "10 Day Notice") pursuant to section 46;
- an order regarding a disputed rent increase pursuant to section 43;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

Because the tenant failed to attend the hearing and present their claim, I dismiss the tenant's claim without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the tenant's claim to cancel the 10 Day Notice?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on August 1, 2017 on a fixed term until July 31, 2018 at which time it continued on a month-to-month tenancy. Rent in the amount of \$1,430.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$687.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was served with the 10 Day Notice on August 8, 2018 by way of posting. The landlord testified that the 10 Day Notice was issued for unpaid late fees in

the amount of \$50.00. Based on the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the 10 Day Notice on August 11, 2018, the third day after its posting.

Analysis

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.

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the 10 Day Notice before me, I find the 10 Day Notice does not comply in content. Specifically, the 10 Day Notice indicates the tenant failed to pay utilities in the amount of \$50.00 whereas the landlord's testimony indicates the tenant failed to pay late fees in the amount of \$50.00. Unpaid late fees do not constitute unpaid utilities.

Although I dismiss the tenant's application, I find the landlord is not entitled to an order of possession based on the noncompliant content of the 10 Day Notice

Conclusion

The tenant's entire application is dismissed without leave to reapply.

An order of possession is not granted to the landlord.

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: October 01, 2018

Residential Tenancy Branch