



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD, OLC

Introduction

This hearing dealt with the tenants' application and amended 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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. Tenant SL (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

As the tenant confirmed that they received the 10 Day Notice posted on their door on November 11, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The tenant gave sworn testimony that they sent the landlord a copy of their dispute resolution hearing package and original application by registered mail to the address provided by the landlord on the 10 Day Notice on November 20, 2018. The tenant also provided sworn testimony and written evidence that on December 3, 2018, they sent the landlord a copy of their amended application and hearing package to three separate

addresses where they believed the landlord or the landlord's agent could be served documents. The tenant provided copies of the Canada Post Customer Receipts for each of these registered mailings. The tenant also attempted unsuccessfully to serve these documents directly to the landlord at the address identified in the 10 Day Notice as the address for the rental unit, but which the landlord may have intended to identify as the address where the landlord could be served documents. Based on the undisputed evidence supplied by the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the original application on November 25, 2018, and the amended application on December 8, 2018.

At the hearing, I noted that the details of the dispute in the tenants' original application indicated that it was the intention of the tenants to set aside the landlord's 10 Day Notice. For this reason, I allowed the tenants' amended application to add the cancellation of the 10 Day Notice to the original application and the issues properly before me.

I also noted that the tenants' application to seek a return of the security deposit and pet damage deposit was premature because this tenancy has not yet ended. For that reason, I have not considered this portion of the tenants' original application.

Rule 2.3 of the Residential Tenancy Branch's Rules of Procedure establishes that "claims made in the application must be related to each other." Arbitrators have the discretion to dismiss unrelated claims with or without leave to reapply. Rule 4.1 clearly enables arbitrators to apply Rule 2.3 to situations where parties have attempted to add unrelated issues to a hearing by way of an amended application. Although the tenants' amended application made reference to a \$7,850.00 monetary award the tenants were seeking, I find that this part of the tenants' amended application was unrelated to the tenants' original application for the issuance of orders against the landlord and the amended application to cancel the 10 Day Notice. This was a totally new issue, one not mentioned in the tenants' original application. In accordance with Rules 2.3 and 4.1 of the RTB's Rules of Procedure, I dismiss the tenants' application for a monetary award with leave to reapply.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The parties signed a two-year fixed term Residential Tenancy Agreement on November 18, 2016 for a tenancy that was to run from December 1, 2016 until November 30, 2018. Monthly rent is set at \$4,400.00, payable in advance on the first of each month, plus utilities. The tenants paid a \$2,200.00 pet damage deposit and a \$2,200.00 security deposit on November 20, 2016.

The landlord's 10 Day Notice identified a total of \$5,886.00, as unpaid utilities that remained outstanding as of November 10, 2018.

The tenants maintained that they had not been provided with the required 30 days of written notice from the landlord that utilities remained outstanding. The tenants provided written evidence and sworn testimony from the tenant at the hearing that the tenants have paid all utilities owing shortly before the landlord issued the 10 Day Notice.

Analysis

In the absence of any attendance at the hearing by the landlord and based on the undisputed sworn testimony of the tenant and the written evidence provided by the tenants, I allow the tenants' application to set aside the landlord's 10 Day Notice. There is no evidence that the landlord allowed the tenants 30 days after the landlord issued the tenants a written notice to pay outstanding utilities.

In addition, I note that section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]." Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

The landlord's 10 Day Notice identified an incorrect address for the rental unit and also appears to have identified an incorrect address for the landlord, where the landlord could be served with documents relating to this matter. Under these circumstances, I find that the landlord's 10 Day Notice did not comply with the provisions of section 52 of the *Act*. Even had the tenants' evidence not been accepted or if service of the tenants'

documents were unproven, there was no basis for ending this tenancy on the basis of the 10 Day Notice due to the failure of the landlord to include the correct address of the rental unit in the 10 Day Notice.

Conclusion

I allow the tenants' application and set aside the landlord's 10 Day Notice. The 10 Day Notice is of no force or effect and this tenancy continues until ended in accordance with the Act.

The tenants' application for the return of the security and pet damage deposits is dismissed with leave to reapply once this tenancy has ended.

The tenants' amended application for a monetary award is dismissed with leave to reapply as this was not an issue related to the tenants' original application.

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: December 18, 2018

Residential Tenancy Branch