



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STANMAR SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR MNDCT

Introduction

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

- a monetary order for compensation for losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

SA ("landlord") testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for the hearing.

The tenant confirmed receipt of the 10 Day Notice dated November 14, 2018, with an effective date of February 27, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on November 17, 2018.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began 19 years ago. The current landlord took over this tenancy in 2014. The landlord testified that rent was set at \$791.00, but the rent was increased to \$822.64 as of January 1, 2018. The landlord testified that the Notice of Rent Increase was served to the tenant in September of 2017, which the tenant disputes having received.

The landlord issued the 10 Day Notice on November 14, 2018 to the tenant for failing to pay the increased rent. The landlord testified that the tenant owes \$367.79 in outstanding rent due to her failure to pay the increase in rent, plus \$19.75 in outstanding charges. The tenant testified that she has lived at this residence for 19 years without any issues with paying rent. The tenant testified that she did not receive any Notices of Rent Increase, nor did she receive any notices informing her that she was in arrears.

The tenant is also seeking a monetary order in the amount of \$560.00 for parking charges that she had paid, but never agreed to, and was not part of the tenancy agreement. The landlord testified in the hearing that the tenant has not been charged any parking charges since July of 2016, and adjustments have already been made to the tenant's file.

Analysis

Section 42 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form. The tenant disputes having received a Notice of Rent Increase despite the landlord's testimony that one was issued to the tenant in September of 2017. The landlord did not submit any documentary evidence in support of the rent increase, and in light of the conflicting testimony and in the absence of supporting documentation to sufficiently support that the tenant was served a Notice of Increase in accordance with section 42 of the *Act*, I cannot determine whether the amount outstanding indicating on the 10 Day Notice dated November 14, 2018 is valid.

I find that the tenant has paid the monthly rent of \$791.00 as required by section 26 of the *Act*. Based on these circumstances I am allowing the tenant's application to cancel the 10 Day Notice dated November 14, 2018, and this tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

The tenant also filed an application for reimbursement of parking charges assessed to her. The landlord's testimony is that the tenant has not been charged this fee, and adjustments have been made to the tenant's account. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the tenant has suffered a loss of \$560.00.

I am not satisfied that the tenant has provided sufficient evidence to support that she had suffered a loss of \$560.00, and accordingly this portion of her application is dismissed with leave to reapply.

Conclusion

I allow the tenant's application, and the 10 Day Notice is cancelled. The 10 Day Notice of November 14, 2018 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The remaining portion of the tenant's 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 8, 2019

Residential Tenancy Branch