



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR, MNRL-S, FFL
For the tenants: CNR, MT, RP, RR, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 19, 2018 (“10 Day Notice”), for a monetary order of \$1,000.00 for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice, for more time to make an application to cancel the 10 Day Notice, for a rent reduction, for regular repairs to the unit, site or property, and to recover the cost of the filing fee.

The landlord, a landlord agent, TS, (“agent”), and the tenants attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

In addition, the first name of the female tenant was corrected to the correct spelling in accordance with section 64(3) of the *Act*.

During the hearing, the female tenant was excused from the hearing as she was clearly distraught due to the passing of her son and was unable to control her emotions during the hearing. The male tenant continued for the remainder of the hearing on behalf of both tenants.

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to cancel the 10 Day Notice, for more time to make an application to cancel the 10 Day Notice and to recover the cost of the filing fee at this proceeding. The balance of the tenants’ application is dismissed, with leave to re-apply.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is either party entitled to a monetary order under the *Act*?
- If the tenancy is ending, shall the security deposit be dealt with under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenants began by provided the file numbers of a previous decision which referred to a cross-application by both parties (“previous decision”). The file number of the previous decision has been included on the cover page of this decision for ease of reference.

At the outset of the hearing, it was clear that both parties were unprepared for this hearing. Due to the tenants alleging that the 10 Day Notice was not valid as they had submitted a receipt in evidence to support that rent was paid, the landlords were asked a very specific question. The landlord was asked under oath if rent was paid for November 2018. The agent replied after speaking with the landlord that no rent was paid for November 2018. The tenants referred to a photo of a manila envelope submitted in evidence that appeared to be a handwritten receipt from the landlord indicating that two payments of rent were paid to the landlord with the landlord’s

signature. The landlord and agent contradicted their earlier affirmed testimony by agreeing that the landlord had received money towards rent for November 2018 and that the signature did belong to the landlord. Both parties provided insufficient evidence to support what amount was paid for November 2018. Namely, the landlords were contradictory on what was paid by the tenants, and the tenants claimed they had the right to withhold \$200.00 for filing fees, yet failed to provide a decision file number which would authorize them to do so. Therefore, I make no finding on what is owed for November 2018, as both parties have provided insufficient evidence.

I find that the 10 Day Notice was invalid as served on the tenants and is cancelled accordingly. The landlord was contradictory by stating no rent was paid for November 2018 and immediately agreed at least \$400.00 was paid and admitted the receipt was signed by the landlord.

Given the above, I find that I do not need to consider either application further as the tenancy shall continue and I make no finding on the amount owing, if any, for November 2018. I am not satisfied that the landlord has set out the amount claimed correctly due to landlord's contradictory testimony. As a result, I dismiss the landlord's claim **with leave to reapply** and remind the landlord not to claim for rent that has already been received and not to issue a 10 Day Notice claiming that the rent wasn't paid when it had been at the time the 10 Day Notice was issued.

I order the tenancy to continue until ended in accordance with the *Act*

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I agree with the tenants that the 10 Day Notice as issued was not valid as the tenants had a receipt for at least a portion of November 2018 rent, as eventually agreed by the landlord during the hearing. Therefore, I find the 10 Day Notice was not a valid 10 Day Notice and is of no force or effect as a result.

The tenancy shall continue until ended in accordance with the *Act*.

I do not grant either party the filing fee pursuant to section 72 of the *Act*.

Conclusion

The 10 Day Notice is invalid and is of no force or effect. The 10 Day Notice dated November 19, 2018 has been cancelled.

The landlord is granted leave to reapply for only the unpaid portion of November 2018 rent, if any. I make no finding if rent remains owing for November 2018 due to insufficient evidence by both parties.

Both parties are reminded to prepare in advance of a dispute resolution hearing to ensure that they are in a position to clearly articulate their evidence to the arbitrator. In addition, while the parties clearly have an acrimonious relationship, I note that the tenants expressed their desire to continue to reside in the rental unit. Accordingly, the parties are encouraged to be civil to each other as a landlord and tenant relationship requires effective communication.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2019

Residential Tenancy Branch