



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR, DRI, ERP, MNDCT, OLC, RP

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;
- a determination regarding a dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to have the landlord comply with the Act and/or tenancy agreement.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 10:05 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attending the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that on January 21, 2019, the landlord was served, by way of Registered Mail, the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the tenant's evidence. The tenant provided as evidence copies of the Canada Post transaction receipt and tracking slip, both of which contained the tracking number, to confirm this mailing.

The tenant testified that the dispute resolution hearing package and evidence was sent to the landlord's service address indicated on the 10 Day Notice provided by the landlord to the tenant.

The information provided on the Canada Post tracking slip confirms that the registered mail item was sent to the same address provided for the landlord on the 10 Day Notice.

Section 90 of the Act determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the Act, I find that the landlord has been deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing, and accompanying evidence, on January 26, 2019, the fifth day after their registered mailing. The hearing proceeded in the absence of the landlord.

Preliminary Issue – Scope of Application

I advised the tenant that she has applied for a number of items as part of his application. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

The Residential Tenancy Branch Rules of Procedure, Rule 2.3 provides me with the discretion to sever unrelated claims:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenant's claim, and hearing from the tenant, I determined that the tenant's claim in relation to cancelling the 10 Day Notice was unrelated to the other issues raised by the tenant. As the 10 Day Notice is the more pressing matter, I exercised my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit. The tenant agreed that the issues not related to the tenant's application to cancel the Notice to End Tenancy should be dismissed with leave to reapply.

Issues(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The 10 Day Notice to End Tenancy subject to this dispute is dated January 08, 2019 and the tenant testified that she received the 10 Day Notice on January 11, 2019. The tenant's application to cancel the 10 Day Notice was filed on January 16, 2019 within the time period permitted under the Act.

The tenant testified that she is not in arrears with respect to the rent owed under the tenancy. The tenant testified that there is not any unpaid rent owed for the month of January 2019, and stated that the landlord does not have valid cause to issue the 10 Day Notice.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

The landlord failed to participate in the hearing and failed to provide sufficient evidence that the Notice was issued on valid grounds. Accordingly, the 10 Day Notice to End Tenancy dated January 08, 2019, is hereby cancelled and of no force or effect.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy, dated January 08, 2019, which is hereby cancelled and of no force or effect. This 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: February 28, 2019

Residential Tenancy Branch