



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LRE, OLC, RR, FFT

Introduction

On January 4, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for unpaid utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an emergency repair Order pursuant to Section 62 of the *Act*, seeking an Order to set conditions on the Landlord’s right to enter the rental unit pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenants confirmed that they served the Landlord the Notice of Hearing package and evidence by registered mail on January 8, 2019 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he placed his evidence in the Tenants’ mailbox on February 12, 2019. The Tenants advised that they did not receive this evidence. As such, I have not accepted the Landlord’s evidence and it will not be considered when rendering this decision. However, the Landlord was able to speak to his evidence during the hearing.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants’ Application with respect to the Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2018. Rent was currently established at \$1,800.00 per month, due on the first of each month. A security deposit of \$900.00 was paid.

The Landlord advised that the Tenants were served the Notice on December 27, 2018 by being posted on the Tenants' door. The Tenants advised that they received this Notice on December 28, 2018. The effective date of the Notice was noted as January 8, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord 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.

With respect to the Notice served to the Tenants on December 27, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Both parties confirmed that the Landlord did not sign the Notice. As such, I am not satisfied of the validity of the Notice as it does not comply with Section 52. Therefore, I find that the Notice of December 27, 2018 is of no force and effect.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. As such, the Tenants are permitted to withhold this amount from a future month's rent to satisfy this debt.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for unpaid utilities of December 27, 2018 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. The Tenants are also allowed to withhold the \$100.00 filing fee from a future month's rent.

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 15, 2019

Residential Tenancy Branch