



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that they received the tenant's dispute resolution package via UPS in the third week of January 2019. While this does not meet the service requirements of section 89 of the *Act*, I find that the landlords were sufficiently served with the application for the purposes of this *Act*, in accordance with section 71 of the *Act*.

Landlord F.B.'s last name was spelt incorrectly on the tenant's application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenant's application to correctly spell landlord F.B.'s last name.

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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to cancellation of the rent increase from the landlord, pursuant to section 42 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenant's application is dismissed and the landlords' Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background/Evidence

While I have turned my mind to the testimony of the landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on May 15, 2015 and is currently ongoing. Monthly rent in the amount of \$2,595.00 is payable on the 15th day of each month. A security deposit of \$1,175.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that on January 19, 2019 the tenant was personally served with a 10 Day Notice to End Tenancy for unpaid rent (the "10 Day Notice"). The landlords testified that the tenant underpaid rent by \$100.00 per month from December 2018 to March 2019. A 10 Day Notice was not entered into evidence.

Analysis/Conclusion

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, **in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.**

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As neither party entered the 10 Day Notice into evidence, I find that I am unable to determine if the 10 Day Notice complies with section 52 of the *Act*. I therefore decline to award the landlord an Order of Possession for unpaid rent pursuant to section 55 of 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: March 04, 2019

Residential Tenancy Branch