



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP

Introduction

This hearing was scheduled in response to 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; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed receipt of the tenant's application. Both parties raised issues regarding service of evidence. In any event, I find the evidence submitted by the parties was not relevant and therefore did not rely upon it.

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 an order for the landlord to make emergency repairs to the rental unit?

Background and Evidence

As per the testimony of the parties, the tenancy began September 2018 on a month-to-month basis. Rent in the amount of \$1,600.00 is payable on the first of each month. The tenant remitted a security in the amount of \$650.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

On January 15, 2019 the landlord issued a 10 Day Notice by way of posting to the unit door, where the tenant resides. During the hearing, the tenant testified that she received the 10 Day Notice on January 15, 2019.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch ("RTB").

Because the 10 Day Notice has been duly served and confirmed received on January 15, 2019 the tenant was required to file her application to dispute the 10 Day Notice no later than Monday January 21, 2019. The tenant filed her application on January 23, 2019, past the allotted time. The tenant did not provide a reason for filing the application late.

For the reasons stated above, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the tenancy is set to end, and as an emergency repair order may only be sought in relation to an ongoing tenancy I dismiss this claim.

Conclusion

The tenant's entire application is dismissed.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

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 08, 2019