



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, OLC, PSF, RP, RR

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. The landlord attended the hearing 10 minutes after the scheduled start time. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person on March 13, 2019. The landlord confirmed that he did not submit any documentary evidence. The landlord stated that he was unable to upload evidence to the system, but did not seek any assistance to remedy this.

Preliminary Issue(s)

At the outset, the tenant, H.K. clarified that the named tenant, D.M. is not a tenant but her son who is an occupant. As such, this named tenant, D.M. Shall be removed from the tenant's application.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant have applied for an order for the landlord to comply with the Act, for an order for the landlord to make repairs, for an order authorizing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided and for an order for the landlord to provide services or facilities. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid utilities, I dismiss these sections of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the 10 Day Notice?

Are the tenants entitled to an order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2018 as per the submitted copy of the signed tenancy agreement dated May 28, 2018. The monthly rent was \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid on May 28, 2018. The agreement provides for both a month-to-month term and a fixed term until July 1, 2019. Neither party clarified this issue.

Both parties confirmed the landlord served the tenant with a 10 Day Notice for Unpaid Utilities. Both parties agreed that the 10 Day Notice dated March 6, 2019 states that the tenant failed to pay utilities of \$419.70 after a written demand was given to the tenant by the landlord on February 1, 2019.

The landlord provided testimony of the written demand. Neither party provided a copy of this written demand. A review of the tenant's submitted documentary evidence shows a photograph(s) of:

An excerpt titled, "Unlawful Rent Increase"
receipts for November 2018, December 2018 and January 2019
receipt for February 2019
10 Day Notice for Unpaid Utilities (blurry and unreadable)
Typed two page letter by tenant's agent to landlord dated January 31, 2019
Two screen shots of RTA website

The landlord claims that there are unpaid utilities. The tenant has disputed that there are no unpaid utilities.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the testimony of both parties that a 10 Day Notice for Unpaid Utilities dated March 6, 2019 was served to the tenant by the landlord. The landlord claims that there are unpaid utilities of \$419.70. The tenant has disputed this claim.

I find on a balance of probabilities that the landlord has failed to establish a claim for unpaid utilities. Neither party provided a copy of the written demand for unpaid utilities served on February 1, 2019. The landlord did not provide sufficient evidence of unpaid utilities except in direct testimony. The tenant disputed that utilities were owed. I note that on the copy of the signed tenancy agreement provided by the tenant that there are no provisions selected regarding any of the utilities and that on page 6 of the signed tenancy agreement "there is not an Addendum" to the signed agreement. On this basis, I find that the landlord has failed to provide sufficient evidence of unpaid utilities. The 10 Day Notice dated March 6, 2019 is cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision as the tenancy continues.

Conclusion

The tenant's application is granted. The 10 Day Notice dated March 6, 2019 is cancelled.

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: April 29, 2019

Residential Tenancy Branch