



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL; CNR, PSF, FFT

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent of \$2,200.00, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, dated March 10, 2019 ("first 10 Day Notice") and April 14, 2019 ("second 10 Day Notice") and (collectively "two 10 Day Notices"), pursuant to section 46;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 14 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant stated that he served a copy of his application for dispute resolution and notice of hearing to the landlord in person on April 16, 2019 and his written evidence package on April 18, 2019, by way of posting to the landlord's rental unit door. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was personally served with the tenant's application and notice of hearing on April 16, 2019, and deemed served with the tenant's written evidence package on April 21, 2019, three days after its posting.

The tenant stated that he received the landlord's first 10 Day Notice on March 10, 2019 and second 10 Day Notice on April 16, 2019. The first notice indicates an effective move-out date of March 25, 2019 and the second notice indicates an effective move-out date of April 23, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's first 10 Day Notice on March 10, 2019 and second 10 Day Notice on April 16, 2019. Copies of the two 10 Day Notices were provided for this hearing.

During the hearing, the tenant confirmed that the landlord had not shut off his water or electricity. Therefore, he said that he was not pursuing his application for an order requiring the landlord to provide services or facilities required by law. This portion of the tenant's application is dismissed without leave to reapply.

Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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.

In the absence of any evidence or submissions from the landlord, I order the landlord's entire application dismissed without leave to reapply.

Issue to be Decided

Should the landlord's two 10 Day Notices be cancelled?

Analysis

In accordance with section 46(4) of the *Act*, the tenant must file his application for dispute resolution within five days of receiving the two 10 Day Notices. In this case, the tenant received the first 10 Day Notice on March 10, 2019 and filed his application to dispute it on April 16, 2019. Accordingly, I find that the tenant's application was not filed within the five day time limit under the *Act*.

However, there was no amount of rent or utilities indicated in the first 10 Day Notice, such that the tenant would know why the notice was issued to him. The tenant indicated that he paid the full March 2019 rent to the landlord and the landlord agreed that the tenant paid this rent in her own application, which only sought April 2019 rent of \$2,200.00 from the tenant. Section 46(1) of the *Act* allows the landlord to issue a 10 Day Notice only after rent is unpaid and section 52(d) of the *Act* requires the landlord to state on a notice to end tenancy, the reason for issuing the notice. By failing to indicate the amount of rent, for failing to show up at this hearing, and by indicating that the tenant paid the required rent for March 2019, I find that the landlord issued an invalid first 10 Day Notice, dated March 10, 2019, to the tenant. Therefore, the tenant does not require an extension of time to cancel the notice, even after the effective date of it, because the notice was invalid from the outset. The first 10 Day Notice is cancelled and of no force or effect.

The tenant received the second 10 Day Notice on April 16, 2019 and filed his application to dispute it on the same date. Accordingly, I find that the tenant's application was filed within the five day time limit under the *Act*. Where a tenant applies to dispute a 10 Day Notice on time, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the 10 Day Notice is based. The landlord did not appear at this hearing. The landlord did not meet her onus of proof.

Further, there was no amount of rent or utilities indicated in the second 10 Day Notice, such that the tenant would know why the notice was issued to him. Section 46(1) of the *Act* allows the landlord to issue a 10 Day Notice only after rent is unpaid and section 52(d) of the *Act* requires the landlord to state on a notice to end tenancy, the reason for issuing the notice. By failing to indicate the amount of rent and for failing to show up at this hearing, I find that the landlord issued an invalid second 10 Day Notice, dated April 16, 2019, to the tenant. This notice is cancelled and of no force or effect.

The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

As the tenant was mainly successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I allow the tenant's application to cancel the landlord's two 10 Day Notices. The landlord's two 10 Day Notices, dated March 10, 2019 and April 14, 2019, are cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an order requiring the landlord to provide services or facilities required by law, is dismissed without leave to reapply.

I order the tenant to deduct \$100.00 total from his future monthly rent payable to the landlord for this tenancy and rental unit, in full satisfaction of the monetary award for the filing fee.

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: May 30, 2019

Residential Tenancy Branch