



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MNSD, RP, OLC, ERP, 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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, 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. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed that the tenant did not serve the landlords with the submitted documentary evidence. Both parties confirmed the landlords served the tenant with the submitted documentary evidence in person on July 22, 2019. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package. I also accept the undisputed evidence of the tenant that the landlords were not served with the submitted documentary evidence. The tenant failed to comply with section 88 of the Act and as such the tenant's documentary evidence is excluded from consideration in this hearing. I also accept the undisputed evidence of both parties for the landlord's submitted

documentary evidence and find that the tenant was properly served as per section 88 of the Act.

Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant stated that monetary claim of \$3,000.00, the request for repairs and the order for the landlord to comply and reduction in rent for repairs, services or facilities not provided were unrelated to the 10 Day Notice. As such, these portions of the tenant's application are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

During the hearing the tenant requested that the cost of emergency repairs be withdrawn. As such, no further action is required at this time.

The hearing shall proceed on the tenant's request to cancel the 10 Day Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to 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.

Both parties confirmed the landlords served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent dated May 24, 2019. Both parties confirmed the landlords served the 10 Day Notice by posting it on the rental unit door on June 3, 2019. The tenant stated that she received it on June 4, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$900.00 that was due on June 1, 2019 and provides for an effective end of tenancy date of June 13, 2019.

The tenant provided testimony that \$700.00 out of the \$900.00 monthly rent was paid on June 1, 2019 and the remaining \$200.00 was not paid. The landlord confirmed that this is correct and that the 10 Day Notice is flawed.

During the hearing both parties confirmed that only \$200.00 was unpaid by the tenant and that monthly rent is \$900.00 payable on the 1st day of each month.

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.

I find based upon the undisputed evidence of both parties that the tenant has established a claim that \$900.00 in monthly rent was not owed as per the 10 Day Notice dated May 24, 2019. The landlord confirmed that this was incorrectly completed by the landlord. On this basis, the 10 Day Notice dated May 24, 2019 is set aside and the tenancy continues.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application is granted. The 10 Day Notice dated May 24, 2019 is set aside and the tenancy continues.

The tenant is granted a monetary order for \$100.00.

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: July 30, 2019

Residential Tenancy Branch