



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR RP RR FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution made on August 2, 2019 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2019 (the "10 Day Notice");
- an order that the Landlord make repairs to the unit, site, or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

The Tenants testified that the Landlord was served with the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package in person. The Landlord acknowledged receipt.

The Landlord testified that two documentary evidence packages were served on the Tenants by leaving copies in the Tenants' mail slot. The Tenants acknowledged receipt of the first package but denied receipt of the second package. However, on review of the second package, I note it appears to be two pages of correspondence between the parties, both of which are dated September 11, 2019. Therefore, I find there is no prejudice in considering the correspondence in the second package. However, it has not factored into this Decision.

No further issues related to service or receipt of the above documents were raised during the hearing. The parties were in attendance and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In this case, I find that the most important issue to address is whether the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' request for an order cancelling the 10 Day Notice, with leave to reapply for the remainder of the relief sought as appropriate.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2013. Effective September 1, 2019, rent increased to \$1,302.00 per month. Rent is due on first day of each month. The Tenants paid a security deposit in the amount of \$550.00 which the Landlord holds.

The Landlord testified the Tenants did not pay rent in full when due on August 1, 2019. Accordingly, the Landlord issued the 10 Day Notice. The 10 Day Notice indicates that rent in the amount of \$50.00 was outstanding. Further, the 10 Day Notice indicates it was served on the Tenants by posting a copy to the door of the Tenants' rental unit on August 2, 2019. The Tenants' Application confirms receipt on that date. A copy of the 10 Day Notice was submitted into evidence. The Tenants continue to occupy the rental unit.

The Tenants testified that the \$50.00 deduction was granted by an arbitrator in a previous decision dated May 31, 2019. A copy of the previous decision was submitted into evidence. In it, the arbitrator stated:

I also find the landlord has adequately compensated the tenants for any temporary discomfort by the \$50.00 rent reduction which will continue to the end of August 2019.

[Reproduced as written.]

The file number of the previous decision has been included above for ease of reference.

The Landlord testified that the arbitrator stated verbally during the previous hearing that the permitted deduction would end when work on the balcony was completed. The Landlord testified the work on the balcony was completed in mid-July 2019 and that the Tenants have been using it since that time. The Tenants denied the balcony is completed because water occasionally drips down from the balcony above and painting work is ongoing.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

Section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due. In this case, I find that the previous decision issued on May 31, 2019, permitted the \$50.00 deduction until the end of August 2019. Therefore, the Tenants had a right under the *Act* to deduct a portion of rent. Further, I find there is insufficient evidence before me to conclude the deduction

would be discontinued in the month after work was completed. This is not reflected in the previous decision. In any event, I accept the Tenants' testimony regarding ongoing painting related to the balconies in August 2019.

As the tenants had a right under the *Act* to deduct a portion of the rent, I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenants are entitled to recover the filing fee paid to make the Application. I order that the Tenants may make a one-time deduction from a future rent payment in the amount of \$100.00.

Conclusion

I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants are granted leave to reapply for orders relating to rent and repairs at a later date at their discretion.

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: October 7, 2019

Residential Tenancy Branch