



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR MNDC RR

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent and/or utilities, pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application to cancel the 10 Day Notice was filed within the time period permitted under the Act.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on May 1, 2019 and the current monthly rent is \$1498.00 plus \$60.00 for parking payable on the 1st day of each month. The tenant is also responsible for utilities as per the tenancy agreement.

The 10 Day Notice to End Tenancy subject to this dispute is dated September 5, 2019. Neither party submitted a copy of this Notice on file. The landlord testified that the 10 Day Notice was issued due to unpaid utilities in the amount of \$218.40.

The tenant testified that she paid the outstanding amount on September 8th or 9th, a few days after receiving the 10 Day Notice. The tenant submits she had paid the amount previously but it was not applied to her account so she was double billed. The tenant submits that the extra payment was or will be reduced from the next rent payment.

The landlord testified that the Notice was issued as there was some miscommunication with the utilities bill but the outstanding amount has since been satisfied by the tenant. The landlord advised she is not seeking an order of possession.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

Section 46(6) of the Act deals with a landlord's notice for non-payment of utilities and stipulates as follows:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find the tenant has satisfied the outstanding amount of utilities as per the 10 Day Notice within 5 days of being served with the Notice.

The 10 Day Notice dated September 5, 2019 is hereby cancelled and of no force or effect.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice dated September 5, 2019 which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: November 15, 2019

Residential Tenancy Branch