



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FF

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 to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover her 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 in person on September 12, 2019 and the submitted documentary evidence via email on October 23, 2019. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via email on October 25, 2019. Neither party raised any service issues.

I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, the tenant's application was clarified. The tenant seeks an order to cancel a 10 Day Notice to End Tenancy issued for Unpaid Rent, an order to suspend or set conditions on the landlord's right to enter and recovery of the filing fee. Both parties were cautioned that the primary issue before me is regarding possession of the rental unit. The hearing ended after 78 minutes while only dealing with the tenant's request to cancel the 10 Day Notice and the request for recovery of the filing fee. As such, the tenant's request to suspend or set conditions on the landlord's right to enter the rental

unit was dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

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

The tenant confirmed that the landlord served a 10 Day Notice dated September 3, 2019 to the tenant in person on September 3, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$897.50 that was due on September 1, 2019.

Both parties confirmed that no signed tenancy agreement was made, but that the monthly rent is \$1,200.00 payable on the 1st day of each month.

The landlord stated that the tenant made a \$302.40 rent payment for the \$1,200.00 monthly rent due for September 1, 2019. The landlord explains that the balance owing is \$897.60 as listed on the 10 Day Notice dated September 3, 2019.

The tenant confirmed the payment of \$302.40 to the landlord, but argued that the remaining balance of \$897.60 is an amount owed by the landlord to the tenant. The tenant clarified that as part of a previous Residential Tenancy Branch Decision dated December 17, 2018 where the tenant obtained an order for a reduction in rent of \$300.00 to \$900.00 from \$1,200.00 for a loss in value to the tenancy as the landlord had failed to comply with a repair order from a previous decision. The Arbitrator wrote in that decision that "on each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed." A table was provided in that decision detailing the progressive monthly rent reductions if the landlord did not complete those repairs. The tenant stated as of September 2019, the monthly rent is determined to be \$500.00 as those repairs have not yet been completed. The tenant details the September 2019 rent payment of \$302.40 in a letter dated August 31, 2019. It states in part,

\$500.00

total rent due (September 2019)

-\$100.00	filing fee recovery for decision dated August 21, 2019
-\$41.97	carry over July 2019 deductions
-\$24.41	carry over August 2019 deductions
-\$20.14	pest control traps (yellow jacket)
-\$11.19	pest control (ant dust)
\$302.40	Total rent paid for September 2019

The tenant provided copies of similar previous notes dated June 28, 2019 and August 1, 2019 regarding the negative carry over amounts for July and August 2019.

The landlord argued that the repairs were completed and the tenant was no longer entitled to a rent reduction. The landlord did not provide any evidence of repair completion nor did the landlord make an application to the Residential Tenancy Branch to obtain an order from an Arbitrator for a determination of such as per that decision.

The tenant provided testimony that the July 2019 deduction was the result of emergency repair request for fencing to the landlord who chose to do nothing. The tenant was forced to carry out these repairs and provided the landlord with the details and invoice for reimbursement. The tenant stated that the costs for those repairs were deducted in August 2019 rent. The landlord provided testimony that he did receive notice of this issue, but "ignored it".

The tenant provided testimony that the August 2019 deduction was the result of emergency repair request for toilet repair to the landlord who took no action. The tenant was forced to carry out this repair and provided the landlord with the details and invoice for reimbursement. The landlord disputed this claim stating that he had only received notification of this issue via email after the repairs were made.

The tenant stated that the deduction of \$20.14 and \$11.19 for pest control were emergency repairs where the landlord was notified, but chose to do nothing. The landlord disputed these claims arguing that at no time did the tenant notify the landlord of these issues. The landlord stated that he could not make any repairs or authorize any payments if he was not notified.

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 accept the undisputed evidence that the tenant was served with the 10 Day Notice dated September 3, 2019.

Section 26 (1) of the Act states in part that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

In this case, the tenant provided evidence that the deductions of \$897.60 detailed in the letter dated August 31, 2019. In reviewing the original order dated December 17, 2018, I find that the tenant has provided sufficient evidence of an authorized deduction for repairs not completed. The landlord had argued that the repairs had been completed, yet provided no evidence of its completion. The landlord did not provide any evidence of an application filed with the Residential Tenancy Branch to seek a determination if or when the repairs were made. On this basis, I find that the repairs have not yet been completed and the tenant is still entitled to the reductions ordered.

I also find in relation to the deductions for July and August 2019 that the landlord had been notified yet chose to do nothing as the landlord "ignored" the notifications of the landlord.

On the deductions for pest control of \$20.14 and \$11.19, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The tenant's claims in this circumstance are authorized. The tenant provided testimony that there have been ongoing repair issues in which the landlord has failed to act and resolve. In this case, the tenant gave direct testimony that the landlord had been notified of these issues and failed to act. The landlord in response argued that he had not been notified and was unable to act. I find that I prefer the tenant's evidence over that of the landlord based upon the landlord's previous history of receiving the tenant's repair request and notifications and not acting by "ignoring it".

I find based upon the above noted that the tenant was authorized in this circumstances to deduct the amount of \$897.60 for September 2019 rent. The 10 Day Notice dated September 3, 2019 is set aside and cancelled. The tenancy shall continue.

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

Conclusion

The tenant's application to cancel the 10 Day Notice dated September 3, 2019 is granted.

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 07, 2019

Residential Tenancy Branch