



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR MNDCT OLC RP FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*;
- an Order for the landlord to make regular repairs pursuant to section 62 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that the documents for this hearing were sufficiently served in accordance with the *Act*.

Preliminary Issue – Amendment to Tenant's Application

The landlord confirmed his legal name and "also known as" name, which was not correctly stated on the tenant's application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to correctly provide the landlord's legal name.

Preliminary Issue – Unrelated Claims

The tenant's application included unrelated claims to the tenant's application to dispute the landlord's 10 Day Notice, and to recover the filing fee for this application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy to determine whether or not the tenancy continues. As the tenant's additional claims has different statutory and are not related to whether or not the tenancy continues, I dismiss with leave to reapply all of the tenant's claims except for their application to dispute the landlord's 10 Day Notice and to recover the filing fee paid for this application. The tenant is at liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The parties confirmed the following terms of the tenancy agreement:

- This tenancy began July 1, 2019 as a fixed-term set to expiry June 30, 2020.
- Current monthly rent of \$2,250.00 is payable on the first of the month.
- The tenant paid a security deposit of \$1,125.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that he served the tenant with the 10 Day Notice dated October 5, 2019, by posting it on the rental unit door on October 6, 2019. The tenant confirmed that she received the 10 Day Notice on October 6, 2019 and filed an Application for Dispute Resolution to dispute the notice on October 11, 2019, which is within the five days provided to dispute the notice in accordance with the *Act*.

The landlord testified that he emailed the tenant the utilities bill on September 5, 2019. On October 4, 2019, the landlord emailed the tenant a demand for the unpaid utilities. The landlord acknowledged that he failed to provide the tenant with a “written” demand to the tenant to make payment of unpaid utilities 30 days prior to serving the tenant with the 10 Day Notice.

The tenant testified that she has paid all utility consumption charges and that she has only withheld the monthly heat pump rental charge as she disputed that she is responsible for this cost as it was not documented in the written tenancy agreement and it is a required “appliance” in order to provide heat to the rental unit.

The landlord testified that the under section 3 of the tenancy agreement, the box of “heat” is not checked off as an included service, therefore the landlord claimed the cost of the heat pump rental was the tenant’s responsibility.

Analysis

Section 46(6)(b) of the *Act* states:

If

...

- (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.

In this case, the landlord acknowledged in his testimony during the hearing that he provided the tenant with the demand for unpaid utilities by email.

Service by email is not one of the acceptable methods for giving a written document as set out in section 88 of the *Act* noted below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
 - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
 - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
 - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (j) by any other means of service prescribed in the regulations.

As such, I find that the landlord failed to comply with the requirements of sections 46 and 88 of the *Act*, and therefore the landlord's 10 Day Notice is cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Further, I find that the section 32 of the *Act* requires that landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. A functioning "primary heating system" is requirement to meet health, safety and housing standards. Section 33 of the *Act* further requires that any repairs to a "primary heating system" qualify as "emergency repairs" and are the responsibility of the landlord to maintain. A primary heating system could include electric baseboards, a gas furnace, or a heat pump, for example. I also note that the tenancy agreement does not set out any requirement for the tenant to pay for the costs of the heat pump rental, which is separate from the tenant's requirement to pay for the cost of heating the rental unit.

For these reasons, I find that the tenant is not responsible for the heat pump rental costs and therefore the landlord cannot consider any unpaid costs on the utility bill related to the heat pump rental as attributable to the tenant as unpaid rent.

As the tenant was successful in her application to cancel the landlord's 10 Day Notice, the tenant is entitled to recover the cost of the \$100.00 filing fee from the landlord. The tenant may withhold \$100.00 from her monthly rent payment on one (1) occasion in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The landlord's 10 Day Notice is cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

The tenant may withhold \$100.00 from her monthly rent payment on one (1) occasion in full satisfaction of the recovery of the cost of the filing fee.

The tenant's unrelated claims are dismissed with leave to reapply.

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 20, 2019

Residential Tenancy Branch