



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR 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 (the 10 Day Notice), pursuant to section 46;
- 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 an opportunity to provide testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions.

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 be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The 10 Day Notice subject to this dispute is dated November 2, 2019. The tenant's application to cancel the 10 Day Notice was filed on November 6, 2019 within the time period permitted under the Act.

The landlord advised that he is not seeking an order of possession pursuant to the 10 Day Notice and the outstanding rent has since been paid by the tenant. The landlord testified that the tenant's rent cheque may have been lost by the Ministry of Social Services but was subsequently replaced. The landlord testified it was replaced approximately 1.5 weeks after the Notice was issued but could not provide an exact date.

The tenant testified that the landlord was out of town at the time the cheque was replaced and he actually received it sooner than 1.5 weeks.

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.

The landlord acknowledged the tenant's rent was late due to an error by the Ministry of Social Services and that the rent cheque was subsequently replaced. The landlord was not able to provide an exact date for when the replacement cheque was received. Accordingly, the 10 Day Notice dated November 2, 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 November 2, 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: December 27, 2019

Residential Tenancy Branch