



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANASIA (CLAYTON) INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, ERP, RR, 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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on December 18, 2019. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence with two packages in person on February 11, 2020 and again late on February 20, 2020. Both parties also confirmed the landlord served the tenant with their submitted documentary evidence in person on February 10, 2020.

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

Extensive discussions were made with both parties clarifying the tenant's application for dispute issues.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order to cancel a 10 Day Notice, a monetary order for money owed or compensation for damage or loss, a monetary order for the cost of emergency repairs, for an order for the landlord to make repairs and for an order for the landlord to provide services or facilities. The tenant stated that his requests for a monetary order for money owed or compensation for damage or loss, a monetary order for the cost of emergency repairs, for an order for the landlord to make repairs and for an order for the landlord to provide services or facilities were related to a verbal agreement for services in lieu of rent. The landlord disputed this claim arguing that at no time was an agreement made for services or that it would be in lieu of rent. The tenant was unable to provide sufficient evidence in support of this claim. On this basis, I find that there is insufficient evidence of an agreement for services in lieu of rent. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply.

The hearing proceeded on the tenant's request to cancel the 10 Day Notice dated December 9, 2019 and recovery of the filing fee.

Issue(s) to be Decided

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

Is the tenant entitled to 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.

Both parties confirmed a signed tenancy agreement was made, but that neither party submitted a copy. Both parties confirmed in their direct testimony that this tenancy began on September 1, 2016. The landlord stated that this was for an initial 1 year term

and then thereafter on a month-to-month basis. The tenant argued that the tenancy was always on a month-to-month basis.

The landlord's agent, C.C. stated that the initial rent was for \$2,400.00 payable on the 1st day of each month which was later lowered to \$2,200.00. The tenant confirmed the initial rent due and argued that the rent was lowered to \$2,100.00. The landlord's agent, S.T. stated that the rent was lowered to \$2,100.00 and not \$2,200.00 as claimed by the landlord's agent, C.C. S.T. stated that he was the primary property manager and that C.C. was only a book keeper. Both parties confirmed that a \$1,400.00 security deposit and a pet damage deposit of \$200.00 were paid.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated December 9, 2019 by posting it to the rental unit door which states in part that the tenant failed to pay rent of \$12,600.00 that was due on July 1, 2019. The 10 Day Notice also provides for an effective end of tenancy date of December 20, 2019.

The landlord's agent, S.T. clarified that the unpaid rent of \$12,600.00 noted on the 10 Day Notice was for unpaid rent for the 6 months between July 2019 and December 2019 at \$2,100.00 per month.

The tenant confirmed that not all of the rent for this period was paid, but argued that the 10 Day Notice was not correct. The tenant clarified that "How could \$12,600.00 in unpaid rent be owed on July 1, 2019" when the landlord has specifically noted that the unpaid rent is for the period after July 1, 2019 (between July 2019 and December 2019).

The landlord's agent, S.T. stated that he "meant that the \$12,600.00 in unpaid rent was for the period July 2019 to December 2019.

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.

In this case, I accept the affirmed testimony of both parties and find that the 10 Day Notice dated December 9, 2019 is flawed. The landlord confirmed that the unpaid rent owed is for the period between July 2019 and December 2019 (6 months at \$2,100.00

per month). The 10 Day Notice relied upon by the landlord states that the \$12,600.00 was owed on July 1, 2019. The tenant also confirmed that not all of the rent was paid for this 6 month period, however there is no evidence before to clarify this issue.

Section 52 of the Act regarding form and content of a notice to end tenancy states in part that in order to be effective, a notice must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

However, this is a 10 Day Notice for Unpaid Rent and it appears the fundamental facts of the notice are flawed. I also note that the landlord has submitted as part of their documentary evidence a summary (tenant ledger) detailing the period between September 2016 and February 2020. A review for the period between July 2019 and December 2019 clearly shows monthly rent owed at \$2,200.00 per month. I find that this is a direct contradiction to the direct testimony of the landlord's agent, S.T.

On this basis, I find that the 10 Day Notice dated December 9, 2019 is set aside and cancelled. The landlord has a duty and burden to provide clear and concise evidence concerning the unpaid rent as detailed in the 10 Day Notice dated December 9, 2019. I find that the evidence from both agents and the submitted documentary evidence requires more questions than to provide answers. In the absence of any clear evidence of unpaid rent, I find that the landlord has failed to justify the details of the 10 Day Notice. The tenant's application to cancel the 10 Day Notice dated December 9, 2019 is granted. 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 next monthly rent due upon receipt of this decision.

Conclusion

The tenant's application to cancel the 10 Day Notice dated December 9, 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: February 21, 2020

Residential Tenancy Branch