



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, MNDCT, DRI, OT, MNRT, CNL, LRE, ERP, MT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten Day Notice") pursuant to section 46;
- An order to dispute a rental increase pursuant to section 41;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order of possession for the tenant pursuant to section 54;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order for reimbursement of costs of emergency repairs pursuant to section 33;
- A request for more time to cancel the Notice to End Tenancy pursuant to section 66.

Both tenants attended. They were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenants provided testimony they served the landlord with the Notice of Hearing, Amendment requesting relief under section 66 (more time to apply to cancel Ten-Day Notice), section 49 (application to cancel 4 Month Notice to End Tenancy), and section 33 (reimbursement for emergency repairs), and an Application for Dispute Resolution by leaving the documents in the landlord's mailbox on March 24, 2020. Further to section 89, I accept the uncontradicted testimony of the tenants and find they served the landlord as required under the *Act*.

Preliminary Issue – Dismissal of Unrelated Claims

At the commencement of the hearing, I advised the tenants that 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.

The tenants' application included unrelated claims in addition to the tenants' application to dispute the landlord's Ten-Day Notice and Four Month Notice. I find that the tenants' primary application pertains to disputing the Notices; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenants' claims, except for the tenants' application to dispute the landlord's Notices, are dismissed. I make no findings with respect to these claims. I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue - Proof

I explained to the tenants 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 Notices that are compliant with the *Act*.

Further to this, 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 tenants have applied to cancel a landlord's Notices, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notices and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and *Rules of Procedure*.

As no evidence was submitted on behalf of the landlord, I order that the tenants' application to cancel the Ten-Day Notice and the Four Month Notice is granted. The Notices are set aside and are of no effect. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Conclusion

I order that the tenants' application to cancel the Ten-Day Notice and the Four Month Notice to End Tenancy is granted. The Notices are set aside and are of no effect. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

I dismiss the remainder of the tenants' claims 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: April 23, 2020

Residential Tenancy Branch