



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LRE, OLC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenants stated that the landlords were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 2, 2020. The tenants also stated that the landlord was served with the amendment to the application for dispute and all of the submitted documentary evidence via email on April 13, 2020.

I accept the undisputed affirmed testimony of the tenants and find that the landlord has been sufficiently served with the notice of hearing package, the amendment to the application for dispute and all of the submitted documentary evidence. Although the landlord did not attend the hearing, the landlord is deemed served as per section 90 of the Act.

At the outset, the tenant's application was clarified. The tenant confirmed that at no time has the tenant been served with a 1 month notice by the landlord. As such, the tenant's request to cancel the 1 month notice is dismissed.

Extensive discussions over the 55 minute conference call hearing determined that the tenant's amended monetary claim for \$31,000.00, reduction in rent for \$600.00, an order for the landlord to comply and an order to suspend or set conditions on the landlord's right to enter the unit were unrelated to the remaining main issue of the tenants' request to cancel the 10 Day Notice for Unpaid Rent. Residential Tenancy Branch, Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. On this basis, these unrelated claims are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The tenants' application shall proceed on the request to cancel the 10 Day Notice and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day notice?
Are the tenants 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 tenants, 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 tenants stated that they were served with a 10 Day notice to end tenancy for unpaid rent and utilities dated March 2, 2020. The 10 Day Notice states that the tenants failed to pay rent of \$1,500.00 that was due on March 1, 2020 and unpaid utilities of \$1,112.77 following a written demand on January 31, 2020. The 10 Day Notice sets out an effective end of tenancy date of March 11, 2020.

The tenants dispute the 10 Day Notice dated March 2, 2020.

Analysis

The onus is on the landlord to provide on a balance of probabilities that the tenants failed to pay rent and in this case as well, unpaid utilities. The landlord did not attend, participate or make submissions on the tenants' application or the details of the 10 Day Notice.

The landlord did not meet their onus of proof. Thus, the 10 Day Notice dated March 2, 2020 is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

The tenants having been successful in their application and are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants' application to cancel the 10 Day Notice is granted.
The tenants are granted a monetary order for \$100.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 29, 2020

Residential Tenancy Branch