



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, DRI, RP, FFT, OPR, MNRL, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On February 5, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 14, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On February 25, 2020, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant’s Application on April 14, 2020 at 11:00 AM.

The Tenant attended the hearing. In addition, the Landlord attended the hearing with L.N. attending as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by posting it to the Landlord’s door on February 6, 2020 and then she sent it by registered mail on February 10, 2020. L.N. confirmed that this package was received and that the Landlord did not take issue with how or when the Tenant served it. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

L.N. advised that there was a misunderstanding and the Landlord did not pick up the Notice of Hearing package from the Residential Tenancy Branch. As a result, this was never served to the Tenant. Based on this undisputed evidence, as the Tenant was not served the Notice of Hearing package, I have dismissed the Landlord's Application with leave to reapply.

The Tenant advised that she served the Landlord with her evidence in the Notice of Hearing packages; however, L.N. advised that while the Landlord received some letters submitted as documentary evidence, she was not able to view the contents of the CD that the Tenant included. The Tenant confirmed that she sent a CD with her digital evidence, but she did not check to see if the Landlord could view this digital evidence, pursuant to 3.10.5 of the Rules of Procedure. As the digital evidence was not viewable by the Landlord, I have excluded this evidence and will not consider it when rendering this decision; however, the paper documentary evidence submitted by the Tenant will be accepted and considered when rendering this decision.

L.N. advised that the Landlord's evidence was not served to the Tenant. As such, I have excluded all of the Landlord's evidence and will not consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to the Notice, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

I also note that all parties agreed that the Landlord signed a new tenancy agreement with a different tenant on February 1, 2020. The Tenant also advised that she was in the

midst of giving up vacant possession of the rental unit as she has been abused by this other tenant, who happens to be her brother, and she has no intention of wanting possession of the rental unit. During the hearing, she was advised that by disputing the Notice, this would mean that she could potentially still be the Tenant of the rental unit. As she did not want to be the Tenant and simply wanted to leave the situation, she withdrew her Application.

I find that the Tenant's request to withdraw the Application in full does not prejudice the Landlord. Therefore, the Tenant's request to withdraw the Application in full was granted.

Conclusion

Based on the above, the Tenant has withdrawn her Application in full.

In addition, the Landlord's Application is 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: April 14, 2020

Residential Tenancy Branch