



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF, MT-CNR, MNDC, DRI, AAT, PSF, LRE, OLC, LAT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- 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;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

- authorization to recover her 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 landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties are deemed sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the applications filed by both parties were clarified. The landlord has made a request on a determination of jurisdiction. Both parties confirmed that a previous application filed by the tenant spoke to jurisdiction which was decided. Both parties confirmed that in that decision jurisdiction of this tenancy is under the Residential Tenancy Act. As such, no further action is required.

The tenant confirmed that the requests in her application for the following issues were unrelated to the primary request for possession:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

On this basis, I find that Residential 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. In this case the tenant has confirmed that the above noted issues are unrelated to the primary issue of

possession. On this basis, these issues are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the remaining tenant's issues.

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to more time to make an application for dispute? If so, Is the tenant entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that the landlord served the tenant with a notice to end tenancy issued for unpaid rent. Both parties confirmed that the landlord served a typed letter dated March 3, 2020 in which it states in part,

This is your notice of eviction as you are behind on rent by one month. You are being evicted for non-payment of rent for your Room and board accommodation at...

The eviction notice as per the contact you signed upon moving in is 10 Days. Please find another place for yourself within the next 10 days unless you pay the outstanding rent for March within 48 hours of this notice or 7pm Friday March 5th, 2020. Please also make sure to remove the vehicle from the property as soon as possible.

Counsel for the landlord confirmed that the noted contents above on the "eviction notice" was the notice to end tenancy issued by the landlord.

The tenant provided written details which argued that the landlord's notice is not valid under the RTA. Under the act there is no proper cause and the notice is not in the proper form.

Analysis

Pursuant to section 46 (1) and (2) a landlord may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with section 52 [form and content of notice to end tenancy].

In this case, both parties confirmed that the landlord served a typed letter dated March 3, 2020 as the notice to end tenancy to the tenant.

Section 52 (e) of the Act states in part that in order to be effective, a notice to end tenancy must be in writing and must when given by a landlord, be in the approved form.

I find that the landlord failed to comply with section 52 (e) of the Act by using an approved form for the notice to end tenancy. As such, I find that the landlord's "notice of eviction" the typed letter dated March 3, 2020 to be ineffective. The landlord's application is dismissed without leave to reapply.

As for the tenant's request for more time to make an application for dispute and the request to cancel the 10 Day Notice, I find that as the landlord's "notice of eviction" is ineffective that more time to make an application and the request to cancel the 10 Day Notice is not required.

I also find that as the landlord's "notice of eviction" is dismissed the tenant is entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I order that the tenant may withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The landlord's application is dismissed.

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: June 09, 2020