



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46 of the *Act*;
- an order for the landlord to comply with the *Act*, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62 of the *Act*;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 10:16 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on August 31, 2020, in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on September 05, 2020, in accordance with section 90(a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the cancellation of the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

- cancellation of the Notice?
- an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant affirmed the tenancy started on July 01, 2018 and he is still residing at the rental unit. Monthly rent is \$850.00, due on the last day of the prior month. At the outset of the tenancy the landlord collected a security deposit of \$425.00 and still holds it in trust.

The tenant stated he received the Notice in person on August 05, 2020. A copy of the Notice was submitted into evidence. It mentions the tenant failed to pay the amount of \$850.00 due on August 01, 2020 and the tenant must move out of the rental unit by August 15, 2020. This application was filed on August 10, 2020.

The tenant explained the rental unit is in a 4-unit complex and he had a verbal agreement with the landlord to do maintenance services in the building. From April 15 to

June 01, 2020 the tenant constantly cleaned the yard and he also cleaned unit 4 after its tenant left. Before April 15 the tenant shoveled snow and after June 01 the only work the tenant did was a plumbing repair on Unit 1 which was impacting the hot water in all the rental units. This plumbing repair lasted one hour and happened on August 12, 2020.

The tenant said he cleaned the yard prior to April 15, 2020 because nobody was hired for this service and he does not like to see the yard dirty. The rental building is needing maintenance, the tenant asked the landlord to provide the maintenance, but the landlord has not taken any action.

When the tenant was hired by the landlord she told him he was authorized to deduct from his rent the payment for his maintenance services, however, the amount of payment was not discussed.

The tenant affirmed the landlord also asked him to repair the kitchen and bathroom floor of units 2 and 4 and authorized him to deduct from his rent the payment for his services. As the tenant does not know how to repair floors he hired a contractor for this service and paid him the amount of \$1,565.00 in June 2020. The tenant submitted into evidence a receipt signed by him for this amount, not dated. The tenant could does not remember the payment date.

The tenant stated he communicated by text message with the landlord about the maintenance services, but he does not know how to submit these text messages into evidence. A two-page hand written to do list, written by the tenant, was submitted into evidence. The tenant was informed during the hearing he could call witnesses, but affirmed he had no witnesses to call.

Analysis

A tenant may dispute a notice to end tenancy for unpaid rent pursuant to section 46(4) of the Act. Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Based on the tenant's undisputed testimony, I find the tenant received the Notice on August 05 and disputed it on August 10, 2020, within the timeframe of section 46(4)(b) of the Act.

Since the landlord has not attended the hearing or presented any evidence, I find that the landlord has failed to satisfy its burden of proving the validity of the Notice.

Accordingly, the Notice dated August 05, 2020 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

As the tenant is successful with his application, pursuant to section 72 of the Act, I authorize him to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent dated August 05, 2020 is cancelled and of no force or effect.

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: October 01, 2020

Residential Tenancy Branch