



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, FFT

Introduction

The tenant filed an Application for Dispute Resolution on September 10, 2020 seeking the following:

- an order to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' (the "10 Day Notice") issued pursuant to section 46 of the *Act*;
- an order that the landlord provide repairs to the rental unit;
- an order providing for a reduction in rent for repairs not provided; and
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 9, 2020. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

In the hearing the tenant stated that they hand delivered notice of this dispute to the landlord's business address. They sent documentary evidence they prepared in advance to the landlord via courier. The landlord confirmed these deliveries in the hearing.

The landlord provided a 'Proof of Service' document to show they hand-delivered their prepared evidence to the tenant directly. This was on September 20, 2020. On the day prior to the hearing the landlord provided additional material and informed the tenant of this in the hearing. The tenant was familiar with the documents in question.

On the basis of a proper exchange of evidence, I proceeded with the hearing.

Preliminary Matter

On their initial Application, the tenant raised issues of repairs needed to the unit. This concerns an issue in the yard and a closet. In the hearing I advised that these issues are outside the scope of the immediate issue concerning the landlord's intention to the end the tenancy. The tenant acknowledged this. I sever these issues from the tenant's Application, and they receive no consideration herein. The tenant has leave to reapply on these issues.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice pursuant to section 46 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the landlord entitled to an order of possession pursuant to section 55(4) of the *Act*?

Is the tenant entitled to a reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement. I reviewed the details therein in the hearing. The parties signed the agreement on June 19, 2019 for the tenancy commencing on July 1, 2019. This was for the fixed term ending on June 30, 2020. After that time the tenancy was set to continue as a month-to-month tenancy. The tenant paid a security deposit amount of \$750.00 on June 21.

The agreement contains the specific provision that the tenant pays \$1,500.00 rent per month. Additionally, they pay 60% of billed hydro and gas amounts. Neither party disputed these terms in the hearing.

The landlord issued the 10-Day Notice on September 3, 2020. The tenant verified their receipt of this document when they returned to the rental unit on September 8, 2020. They verified the document was attached with tape to the door of the unit.

The 10-Day Notice shows the reason for its issuance is unpaid utilities. This is in the amount of \$177.12 and follows after the landlord provided a written demand to the tenant on

September 1, 2020. In the hearing, the landlord provided that they started managing the property in March 2020.

A September 2, 2020 message from the property management company shows the amount of \$177.12. The landlord in the hearing provided that this an auto-generated email to inform tenants on an automatic cycle of rent and utility billing. The message itself contains a list of the account in question, from June 29, 2020 through to September 2, 2020. The message shows it was sent to the tenant at their commonly-used email with the subject "PAST DUE NOTICE". This shows the amount of \$177.12 which includes a \$25.00 late fee.

The tenant maintained they were not receiving these messages from an auto-server. In the hearing, the landlord forwarded them directly on to the tenant. The tenant stated that prior to the new manager taking over in March 2020, they received copies of bills directly to verify the amounts owing. They stated they were asking for copies but did not see these since March. Without copies, the tenant stated they had "no way of verifying if it is or not" in regard to the specific amount of \$177.12. They acknowledged they were aware of some amounts owing; however, they had not seen an actual bill to verify.

The landlord provided that they issued the 10-Day Notice after a written demand was sent to the tenant on August 21, 2020. They maintained this included a copy of the utility bill attached to the email. After no response from the tenant to this demand, they issued the 10-Day Notice on September 3, 2020. When questioned directly, the landlord confirmed that they issued the 10-Day Notice as a reminder to the tenant to pay outstanding bill amounts.

Following this, the parties reviewed the matter of communication as the primary means of verifying amounts owing. The tenant then stated that they would be able to pay the outstanding amount on the very day of the hearing if they had verification of the amount. The landlord then indicated this would be a satisfactory resolution of the matter.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

The landlord submitted proof they twice served a 10 Day Notice to the tenant for unpaid rent. The only notice before me on this review is that issued on February 4, 2020.

I am satisfied, based on the agreement from both parties, that the tenant shall pay the outstanding amount of utilities owing. The landlord agreed to this proposal. I find the parties are satisfied that the reason for the issuance of the 10-Day Notice is now resolved.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I cancel the 10-Day Notice. The tenancy continues as per the tenancy agreement, governed by the *Act*.

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 14, 2020

Residential Tenancy Branch