



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNR, CNC, OLC, LRE, LAT*

Introduction

This hearing dealt with three applications by the tenant pursuant to sections 47, 46, 62, and 70 of the *Residential Tenancy Act*. The tenant applied for an order to set aside notices to end tenancy for nonpayment of rent and for cause. The tenant also applied for an order directing the landlord to comply with the *Act*, to restrict the landlord's right to enter the rental unit and for authorization to change the locks.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for an order for the landlord to comply with the *Act*, to restrict the landlord's right to enter the rental unit and for authorization to change locks. As these sections of the tenant's applications are unrelated to the main section, which is to cancel the notices to end tenancy, I dismiss these sections of the tenant's claim with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the notices to end tenancy.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The background facts are generally undisputed. The tenancy began on February 01, 2013. The current monthly rent is \$700.00 due on the first day of each month. Neither party filed a copy of the tenancy agreement. The parties agreed that on October 02, 2020, the landlord served the tenant with two notices to end tenancy for cause and for nonpayment of rent. The tenant disputed the notices in a timely manner. Neither party filed a copy of the notices into evidence.

In the absence of the notices, I was unable to determine their validity. The tenant described the notice to end tenancy for nonpayment of rent. Based on the tenant's description of the notice, I found on a balance of probabilities that it was more likely than not that the notice was in compliance with section 52 of the *Residential Tenancy Act*.

The landlord stated that the reason for the 30-day notice for cause was that the tenant had not paid rent on October 01, 2020.

The landlord agreed that the tenant paid rent on October 05, 2020 and at the time of the hearing was up to date on rental payments.

Analysis:

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 02, 2020 and applied to dispute the notice within the legislated time frame of five days. The landlord agreed that the tenant paid rent on October 05, 2020 which is also within five days of receiving the notice to end tenancy.

Section 46(4)(a) of the *Residential Tenancy Act* states that within 5 days after receiving a notice to end tenancy for nonpayment of rent, the tenant may pay the overdue rent, in which case the notice has no effect.

Based on the above, the notice to end tenancy is set aside and therefore the tenant's application to cancel the notice is granted.

In the absence of a notice to end tenancy for cause, I am unable to determine its validity. The landlord stated that the reason for the notice was nonpayment of rent. Since I find that the tenant is up to date on rental payments, the notice to end tenancy for cause is also set aside.

Conclusion

The notices to end tenancy are set aside and the tenancy will continue.

The remainder of the tenant's applications 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: December 08, 2020

Residential Tenancy Branch