



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR, LRE, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulations, or the tenancy agreement;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to complete repairs; and
- Recovery of the filing fee.

I note that Section 55 of the Act requires that when a tenant submits an Application 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 is compliant with Section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant and their Witness, both of whom provided affirmed testimony. The Landlord did not attend. The Tenant and their Witness were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of the documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me, was posted to the Landlord's door at 11:00 P.M. on December 16, 2020, in the presence of the Witness. The Witness testified that the above noted documents were posted to the Landlord's door by the Tenant, as set out above, and that both they and several peace officers were present at the time of service. A photograph showing the document package taped to a door was also submitted for my review and consideration.

Section 90(c) of the Act states that a document given or served in accordance with section 88 or 89 of the Act, unless earlier received, is deemed to be received the 3rd day after it is attached to a door or other place. As a result, and as there is no evidence before me to the contrary, I find as fact that the Notice of Dispute Resolution Proceeding Package and the Tenant's documentary evidence, was posted to the Landlord's door on December 16, 2020, and I therefore deem it received three days later on December 19, 2020.

As Branch records indicate that the Notice of Dispute Resolution Proceeding Package was emailed to the Tenant on December 15, 2020, I find that the Tenant served the above noted documents in accordance with section 59(3) of the Act and the Rules of Procedure.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I verified that the hearing details contained in the Notice of Hearing were correct and note that neither the Tenant nor their Witness, who called in from separate phone lines, had difficulty attending the hearing on time using this information. Based on the above, and as I am satisfied that the Landlord was deemed served with the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, on December 19, 2020, the hearing therefore proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf.

As I was also satisfied that the documentary evidence before me from the Tenant was deemed served on the Landlord in accordance with the Act and the Rules of Procedure on December 19, 2020, I accepted the documentary evidence before me from the Tenant for consideration.

Although I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant copies of this decision and any orders issued in their favour will be emailed to them at the email address provided in the Application.

Preliminary Matters

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claim relates to the payment of rent and whether the tenancy will continue or end. As I find that the majority of the other claims by the Tenant in the Application are not sufficiently related to the 10 Day Notice, I exercised my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the Act, regulations or the tenancy agreement;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to complete repairs.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the 10 Day Notice and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice, and if not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on September 15, 2020, that rent in the amount of \$2,700.00 is due on the first day of each month, and that a security deposit in the amount of \$1,350.00 and a pet damage deposit in the amount of \$1,350.00 were to be paid. The tenancy agreement also states that the costs of utilities are to be shared.

The Tenant testified that on approximately December 7, 2020, or December 8, 2020, at around 10:00 P.M. they were personally served with the first page of a document purporting to be a 10 Day Notice and a one page typed document, by the Landlord. A copy of these documents were submitted for my review.

The Tenant testified that there is no validity whatsoever to the document purporting to be a 10 Day Notice, which in any event, does not appear to be in the proper form, and that the 10 Day Notice was served in bad faith as the Landlord is simply trying to end the tenancy as there have been ongoing issues between them.

The Landlord did not appear at the hearing to provide any evidence or testimony for consideration.

Analysis

As there is no evidence before me to the contrary, I accept that a tenancy to which the Act applies exists, the terms of which are set out above and in the copy of the tenancy agreement submitted by the Tenant for my review and consideration. I also find as fact that the Tenant was personally served with one page of a document purporting to be a notice to end tenancy and a one page typed document, on either December 7, 2020, or December 8, 2020, and that the Tenant therefore filed their Application seeking cancellation of the 10 Day Notice in accordance with section 46(4) of the Act.

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, rule 6.6 of the Rules of Procedure states that the landlord bears the burden to prove that they had sufficient cause, on a balance of probabilities, under the Act to issue the Notice and to end tenancy. As the Landlord did not attend the hearing or provide any evidence or testimony for consideration, I find that they have failed to establish, on a balance of probabilities, that they had cause to end the tenancy under the Act. Further to this, I am not satisfied that the 10 Day Notice submitted by the Tenant complies with section 52 of the Act, as only one page was served and this page is either not an

approved Branch form, or is so significantly outdated that it does not contain the Branch logo, the form number, the form creation date, or have all of the required information.

As a result, I order that the 10 Day Notice submitted by the Tenant and served on them by the Landlord on either December 7, 2020, or December 8, 2020, is invalid and that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the Act.

Pursuant to section 72 of the Act, the Tenant is also entitled to recovery of the \$100.00 filing fee, which they may recover by either deducting \$100.00 from the next months rent payable under the tenancy agreement pursuant to section 72(2)(a) of the Act, or by serving and enforcing the attached Monetary Order in the amount of \$100.00, pursuant to section 67 of the Act, but not both.

Conclusion

I order that the 10 Day Notice is invalid and that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the Act.

The Tenant is also entitled to recovery of the \$100.00 filing fee, which they may recover by either deducting \$100.00 from the next months rent payable under the tenancy agreement pursuant to section 72(2)(a) of the Act, or by serving and enforcing the attached Monetary Order in the amount of \$100.00, pursuant to section 67 of the Act, but not both.

Although I severed the Tenant's claim for an Order that the Landlord comply with the Act, regulations, or tenancy agreement, and have therefore made no findings of fact or law in relation to the validity of this portion of the Application, the Tenant stated during the hearing that the Landlord has previously cut off their utilities and other services and facilities in retaliation. The Tenant pointed to an email in the documentary evidence before me, which appears to have been authored by the Landlord on December 8, 2020, wherein the author threatens to disconnect the Tenant's power and water.

At the hearing the Tenant stated that their power and water is currently on but that they are concerned that the Landlord may disconnect their utilities again in the future. I advised the Tenant that if this occurs, they should immediately contact the Branch. Although I have made no findings of fact in relation to the validity of these claims, the Landlord is cautioned that pursuant to section 27(1) of the Act, a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's

use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement and that the restriction or termination of a service or facility, other than one referred to above, is subject to the conditions set out in section 27(2) of the Act. Further to this, the Landlord is cautioned that failure to comply with the Act, regulations, tenancy agreement, or decisions and orders from the Branch could result in administrative penalties of up to \$5,000.00 per day pursuant to section 87.4 of the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 9, 2021

Residential Tenancy Branch