



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, PSF, MNDCT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- a monetary award for damages and loss pursuant to section 67;
- an order that the landlord provide services or facilities pursuant to the Act, regulations or tenancy agreement pursuant to section 70; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to provide services or facilities as required under the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant submits that this periodic tenancy began in 2018 and the monthly rent is \$1,281.00 payable on the first of each month. The tenant claims they were issued a 10 Day Notice to End Tenancy for Unpaid Rent dated December 10, 2020 (the “10 Day Notice”).

The landlord claims that the current monthly rent is \$1,314.00 payable on the first of each month. The landlord agrees that they issued a 10 Day Notice. Neither party provided a copy of the 10 Day Notice into evidence. The landlord's documentary evidence includes 10 Day Notices dated January 2, 2019 and November 2, 2018.

The tenant claims for the cost of replacing a “toilet flush lever” of \$11.19 which they claim was an urgent repair. The tenant also submits that they would like the landlord to service the vents of the dryer in the rental unit. The tenant writes in their application “this has not been brought up prior”.

The landlord submitted some excel sheets and ledgers with handwritten notes to support their position that there is an arrear for this tenancy. The landlord also testified that they have made a demand for utilities.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus is on the applicant making a claim to establish that claim on a balance of probabilities.

I find the present application to be so bereft of cogent details or documentary materials from the parties that I am unable to find that either has met their evidentiary burden.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

While the parties agree that there was a 10 Day Notice issued dated December 10, 2020 a copy was not submitted into evidence by either party. I find that in the absence of a proper notice submitted into documentary evidence I am unable to determine if it meets the form and content requirements of section 52 of the *Act* or that there was a

valid reason stated on the notice for the tenancy to end. Consequently, I allow the tenant's application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the Act.

I find the tenant has provided insufficient evidence for the balance of their claim.

Section 67 of the *Act* establishes that an applicant may claim for damages and loss if they can establish the existence of a loss and that it stemmed directly from a violation of the agreement or contravention of the Act.

I find a single receipt for the purchase of a toilet handle to be insufficient to demonstrate that there was a need for it to be replaced, that the repair was urgent, that the tenant contacted the landlord as required under section 33 of the *Act* or that the landlord failed to perform the repair in a reasonable time. I therefore dismiss this portion of the tenant's claim.

I find the tenant's submission requesting vent cleaning to not be supported in the documentary materials or detailed testimony and lack an air of urgency or reality. I am not satisfied that the landlord has not maintained the rental unit in a reasonable state such that an order is appropriate. Accordingly, I dismiss this portion of the tenant's claim.

As I find the tenant was not wholly successful in their application I decline to issue an award for recovery of the filing fee.

Conclusion

The 10 Day Notice is cancelled and of no further force or effect.

The balance of the tenant's application is dismissed without 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: March 11, 2021

Residential Tenancy Branch