



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, RR, OLC, LRE, LA, MNDCT, FFT

Introduction

This was a hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On October 5, 2021, the Tenants applied for dispute resolution seeking the following relief:

- For an order for the Landlord to make repairs to the rental unit.
- To suspend or set conditions on the Landlords right of enter the rental unit or site.
- For an order that the Landlord comply with the Act, Regulation, or tenancy agreement.
- To reduce the rent for repairs, services, or facilities agreed upon but not provided.
- For a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.
- To recover the cost of the filing fee.

On October 6, 2021, the Tenants submitted another application for dispute resolution seeking the following relief:

- To suspend or set conditions on the Landlords right of enter the rental unit or site.
- For authorization to change the locks to the rental unit.
- For an order that the Landlord comply with the Act, Regulation, or tenancy agreement.
- The Tenants added a request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent prior to the documents being prepared on October 12, 2021.
- To recover the cost of the filing fee.

On November 4, 2021, the Tenants filed an amendment to both their applications to include a dispute of another notice to end tenancy. The Tenants amended their applications to include the following:

- To be paid back the cost of emergency repairs.
- To increase the amount of compensation being claimed.
- To dispute a One Month Notice to End Tenancy for Cause dated October 29, 2021 ("the One Month Notice").

The matters were set for a conference call hearing. Both of the Tenants' applications were joined to be heard together. The Tenants and Landlords were present at the hearing. The Landlords were assisted by legal counsel. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants' two applications and amendment contain numerous claims to be resolved. The hearing was scheduled for one hour and the Tenants were informed that there is not enough time to deal with all their claims, and that there was no opportunity to extend the hearing.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find the most important matter to determine is whether or not the tenancy is ending based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and/ or a One Month Notice to End Tenancy for Cause. The Tenants were informed that the remainder of their claims are dismissed with leave to reapply.

The Landlords' counsel stated that the Landlords were not aware that the Tenants had amended their application to include a dispute of the One Month Notice. Counsel stated that the Landlord did not provide their documentary evidence regarding the One Month Notice. The Landlord's counsel state that there is a hearing scheduled in January 2022, and he proposed that the dispute of the One Month Notice be dealt with at that hearing.

The Tenants testified that they served the Landlord a copy of their amended application which was served to the Landlord around November 9, 2021. In the Tenants 581 pages of documentary evidence, I located a registered mail receipt for mail sent around November 14, 2021.

The Landlords' counsel stated that they received documents from the Tenants on November 16, 2021; however, there was no amendment document indicating the one Month notice was disputed.

At this point in the hearing, it is clear to me that on November 4, 2021 the Tenants amended their application to include a dispute of the One Month Notice dated October 29, 2021. Since it is not clear whether the Landlord was served with the amendment, I decided that there would be no prejudice to the Tenants to have the matter heard at the January 2022 hearing. The Tenants' dispute of the One Month Notice and the Landlords' application to enforce the One Month Notice will be heard at the January 2022 hearing. The parties are reminded to provide the RTB with any documentary evidence they wish to rely on in regard to the dispute of the One Month Notice. The evidence from this hearing does not carry forward.

I did not hear the merits of the One Month Notice and I am not seized of the matter. Furthermore, I am not available to take the January 2022 hearing.

This hearing proceeded based on the dispute of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2021.

Issue to be Decided

- Are the Landlords entitled to end the tenancy and receive an order of possession and monetary order due to non-payment of rent?
- Are the Tenants entitled to recover the cost of the filing fees?

Background and Evidence

The Landlords and Tenants testified that the tenancy began on June 1, 2021 as a short, fixed term tenancy until September 7, 2021. Rent was \$5,000.00 each month and due to be paid to the Landlords by the first day of each month.

The parties entered into a new tenancy agreement on September 7, 2021 for a fixed term until June 30, 2022. Rent in the amount of \$3,000.00 is due to be paid to the Landlords by the 7th day of each month.

The Tenants previously owned the residential property and sold the property to the Landlords. The tenancy addendum includes that the Landlords agree to allow the Tenants to sublet the property via Air Bnb with the proceeds going to the Tenants.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2021. The 10 Day Notice indicates the Tenants have failed to pay \$3,000.00 that was due on October 7, 2021.

The 10 Day Notice informed the Tenant that the notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explains the Tenants had five days to dispute the Notice.

The Landlord testified that the Tenants paid the rent within 5 days of receiving the 10 Day Notice and the Landlord is not seeking to end the tenancy based on the 10 Day Notice. The Landlord is also not seeking a monetary order for unpaid rent.

In reply, the Tenants testified that they paid their rent-on time by taping the October rent cheque to the Landlords' door on October 7, 2021. The Tenants testified that after they received the 10 Day Notice, they posted another cheque on the Landlords door and cancelled the first rent cheque two days later. The Tenants testified that they have previously paid the rent using e-transfer and also have paid by posting cheques to the Landlords' door. The Tenants suggested that the Landlord is playing games.

The Landlord stated that on October 4, 2021 the Tenants requested compensation from the Landlords and then on October 7th the Landlords did not receive a rent cheque. The Landlords' counsel submitted that this is a high conflict case and there is no evidence of the Landlord having bad intentions.

Filing Fee

The Tenants are seeking to recover the cost of the two filing fees for their two applications.

The Landlords' counsel pointed out that the Tenants did not need to apply for dispute resolution to dispute the 10 Day Notice because the rent was paid within 5 days and the Notice ceased to have effect.

Analysis

10 Day Notice

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(4) of the Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the Tenants and Landlords, and on a balance of probabilities, I find that the Tenants received the 10 Day Notice and paid the October rent owing under the tenancy agreement to the Landlords within 5 days of receiving the Notice.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2021 is successful. The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I find that the Tenants could have amended their October 5, 2021 application and did not need to submit a new application and pay another \$100.00 filing fee on October 6, 2021. I find that it is not reasonable to expect the Landlord could be responsible to repay the cost of two applications.

I also find that the Tenants did not need to dispute the 10 Day Notice because the rent had been paid within 5 days of receiving the 10 Day Notice. I am mindful that the Tenants' other claims are dismissed with leave to reapply and the dispute of the One Month Notice is being heard in January 2022. The Tenants' request to recover the filing fee for the October 6, 2021 application is dismissed. With respect to the Tenants

October 5, 2021 application; it is at the Arbitrators discretion to award recovery of the filing fees following the outcome of the January 2022 hearing.

Conclusion

The Tenants' application is successful. The rent owing under the tenancy agreement was paid within 5 days of the Tenants receiving the 10 Day Notice. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2021 is cancelled.

The tenancy will continue until ended in accordance with 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: December 1, 2021

Residential Tenancy Branch