



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, MNRT, LRE, OLC, AS**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to allow an assignment or sublet when permission has been unreasonably denied pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;

The parties attended. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution.

1. Preliminary Issue – Multiple Claims

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claims are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for applications to dispute the landlord's 10 Day Notice are dismissed, and I grant the tenant liberty to reapply.

2. Preliminary Issue - Burden of Proof

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

3. Preliminary Issue 1

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 10 Day Notice? Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed the landlord owns property on which a house is located. The house was in disrepair in 2019.

At that time, the tenant testified the parties entered into a verbal agreement in April 2019. The terms of the agreement were as follows:

1. The tenant would occupy the landlord's house starting November 2019;
2. The tenant would do work on the unit including the following: repairs, reconnect the electricity, and clean up the property;
3. The tenant would pay for the expenses associated with # 2; and
4. The tenant would pay no rent for 2 years, until April of 2022 at which time the parties would determine the conditions on whether the tenancy would continue including any rent to be paid in the future;

The landlord disagreed with the tenant's version of the agreement. The landlord testified the tenant agreed to pay \$1,400.00 monthly for rent from the beginning of occupancy and has been paying rent regularly, stopping on June 1, 2021. The landlord denied any terms of the agreement as claimed above by the tenant. The landlord submitted no evidence in support of his testimony such as a ledger or bank statements. The landlord explained that all payments were "cash".

The parties agreed the landlord issued a 10 Day Notice on June 18, 2022 which was served on the tenant that day. The Notice stated the tenant did not pay rent for June 2021 in the amount of \$1,400.00.

Analysis

I have considered the evidence submitted and will only refer to relevant, admissible evidence key to my findings.

I find the landlord has failed to meet the burden of proof with respect to the terms of any tenancy. The landlord's testimony has been contradicted by the tenant. The landlord has submitted no supporting evidence.

I find I am unable to determine was rent, if any, was payable by the tenant. I am therefore unable to determine the validity of the 10 Day Notice.

As the landlord has failed to meet the burden of proof, I vacate the 10 Day Notice which is of no force or effect.

Conclusion

The 10 Day Notice is vacated and is of no effect.

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 03, 2021

Residential Tenancy Branch