Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FFT, RP

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act.*

DP and JP represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord's agents withdrew their application for an Order of Possession pursuant to the 10 Day Notice dated August 5, 2021, and confirmed that they wished to cancel the 10 Day Notice. Accordingly, the tenant's application to cancel the 10 Day Notice was cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

Preliminary Issue—Service of Tenant's Amendment

The landlord's agents testified in the hearing that they were not served with the tenant's amendment package at least 14 days prior to the hearing date. The tenant testified that their assistant PK had filed the amendment on November 29, 2021, and then went to personally deliver the package to the landlord at the landlord's service address. The tenant testified that they had buzzed the landlord through the directory, and a man had directed PK to deliver the package through the slot. PK attended the hearing and testified that a person was present on the other side to receive the package.

The landlord's agents testified that the man was the building manager, and was not a designated agent for the landlord, nor was the person involved with managing any aspects of the tenancy. The landlord's agents testified that the materials would have been placed in a box, which is normally used for cheques.

Rule 4.6 states the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

***In any event, a copy of the amended application and supporting evidence must be received by the* by the respondent(s) not less than 14 days before the hearing.**

Section 88 of the Act states the following about acceptable forms of service of documents for a hearing: (bolds added by myself for emphasis):

How to give or serve documents generally

88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a)by leaving a copy with the person;

(b)if the person is a landlord, by leaving a copy with an agent of the landlord;

> **(c)by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**
> (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
> (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
> **(f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;**
> **(g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;**
> (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
> (i)as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
> (j)by any other means of service provided for in the regulations.

In this case, I am not satisfied that the party that the tenant's assistant had attempted to serve was an agent of the landlord. I am satisfied that a copy of the documents were placed in the mailbox at the address, and therefore in accordance with sections 88 and 90 of the Act, the amendment is deemed served 3 days later, on December 2, 2021.

The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

I have given consideration to the principle of natural justice and fairness, and the fact that the respondent must know the case against them. I find that the amendment was not served on the landlord at least 14 days prior to the hearing date. The reason this time limit is applied to service of amendments and evidentiary materials is to ensure that the responding party has ample opportunity to review the materials and respond prior to

the hearing date. I am not satisfied that the amendment materials were served within the required timelines, and in a manner that is required by the Act. Accordingly, the tenant's amendment was not considered at the hearing.

Issues

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 1, 2020, with monthly rent currently set at $5,700.00, payable on the first of the month. The landlord had collected a security deposit in the amount of $2,850.00, which the landlord still holds.

The tenant is seeking reimbursement in the amount of $1,419.69 paid for exterior cleaning of the townhome paid by the tenant. The tenant submitted a receipt for this amount for May 2021. The tenant testified that the tenancy agreement stipulates that the landlord is responsible for exterior cleaning of the townhome annually, and in the previous year the tenant was reimbursed for this same expense.

The landlord does not dispute that they are responsible for annual exterior cleaning, but argued that this is an included service that the landlord pays for through their strata fees. The landlord confirmed that they did reimburse the tenant for the cleaning in 2020, but argued that this was done at the beginning of the tenancy as agreed upon on a one-time basis, and the subsequent cleanings were to be performed as scheduled by the strata. The landlord testified that they pay a monthly maintenance fee of $2,000.00 per month, which covers the cost of exterior cleaning and power washing, and which is already performed twice per year. The landlord included in their evidence window cleaning notices issued by the strata. The landlord testified that no other reimbursements were agreed upon, and that the initial reimbursement for the cleaning was done as a move-in incentive, and not a regular deduction from the monthly rent.

Analysis

The tenant filed a monetary claim for reimbursement of exterior cleaning services paid for by the tenant. The tenant testified that the agreement was for the cleaning to be

performed once a year, and that the tenant would be reimbursed as they were in the previous year. In consideration of the evidence and testimony before me, I note that the tenancy agreement stipulates that the “initial cleaning to be done & pd for by landlord. Power wash of outside areas to be done 1x year.”.

The landlord argued that the exterior cleaning and power washing was already included in the services included in the strata fees, and that the service is therefore scheduled and paid for by the strata, and it would not make sense to pay for a duplicate service at an additional expense. The landlord testified that they had reimbursed the initial cleaning as noted on the tenancy agreement as a move-in incentive.

In light of the conflicting testimony, I find that although the tenancy agreement stipulates that exterior power washing would be done at least once per year. The tenant did not produce any agreement that states that the landlord would reimburse the tenant for this expense, although the tenancy agreement did contain a clause that the initial cleaning would be paid for the landlord. I find that the evidence supports the testimony of the landlord, and that there was no agreement to reimburse the tenant for exterior cleaning services. As noted by the landlord, this service is performed by the strata, which the landlord pays a monthly fee for, and which is done on at least an annual basis. I find that I find that the initial reimbursement does not support the existence of a contract or agreement for the landlord to reimburse the tenant for exterior cleaning, as the tenancy agreement contained a clause that stated the initial cleaning would be paid for by the landlord, as it was in this case.

I do not find the tenant’s submissions to be convincing or persuasive, nor do I find the tenant’s position to be supported in the evidence. Accordingly, I dismiss the tenant’s application for reimbursement of the exterior cleaning without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, the tenant’s application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The landlord cancelled the 10 Day Notice to End Tenancy dated August 5, 2021. Accordingly, the 10 Day Notice is of not force or effect, and the tenancy is to continue until ended in accordance with the *Act.*

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: January 13, 2022

Residential Tenancy Branch