



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Evo Homes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, CNR, OLC, MNDCT, RP, RR, LRE, PSF, AS

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 03, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated January 31, 2022 (the “January Notice”)
- To suspend or set conditions on the Landlord’s right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For a repair order
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To be allowed to assign or sublet where the Landlord's permission has been unreasonably withheld
- To recover the filing fee

The Tenant amended the Application on April 07, 2022, to add the following claims:

- For compensation for monetary loss or other money owed in the amount of \$30,000.00
- To reduce rent for repairs, services or facilities agreed upon but not provided in the amount of \$7,500.00
- To dispute a second 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities received April 05, 2022 (the “April Notice”)

The Tenant appeared at the hearing. Z.C. appeared at the hearing for the Landlord with S.M. to assist (the “Landlords”). I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant I would consider the disputes of the January Notice and April Notice (the “10 Day Notices”) and request to recover the filing fee and dismiss the remaining requests as they are not sufficiently related to the disputes of the 10 Day Notices. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The only documentary evidence submitted is from the Tenant in relation to service of the hearing package on the Landlord. The Landlords confirmed receipt of the hearing package for the Application. S.M. confirmed receipt of the Amendment to the Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the January Notice be cancelled?
2. Should the April Notice be cancelled?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlords testified as follows. There is a tenancy agreement between the parties which started in December of 2021 and is a month-to-month tenancy. Rent is \$1,550.00 due on the first day of each month.

The Tenant agreed with the above points about the tenancy agreement, other than the start date which the Tenant testified was in August of 2021.

Neither party submitted the 10 Day Notices. I asked the Landlords why the 10 Day Notices were not submitted. S.M. said the Landlords just assumed the Tenant would submit the 10 Day Notices. I asked if the Landlords had evidence that the Tenant submitted the 10 Day Notices and S.M. advised they did not.

Analysis

10 Day Notices to End Tenancy Issued for Unpaid Rent or Utilities are issued pursuant to section 46 of the *Act*. Pursuant to section 46(2) of the *Act*, the Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy **must** be in writing and **must**

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...
- (e) when given by a landlord, be in the approved form.

(emphasis added)

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the validity of the 10 Day Notices.

The Landlord should have submitted copies of the 10 Day Notices because they have the onus to prove the validity of the 10 Day Notices. I note that the Landlord was not led to believe the Tenant submitted the 10 Day Notices and S.M. just assumed the Tenant would do so. In the absence of copies of the 10 Day Notices before me, I cannot confirm whether they comply with section 52 of the *Act* and therefore cannot confirm whether they are valid notices to end tenancy. In the absence of copies of the

10 Day Notices before me, the Landlord has failed to prove the validity of the 10 Day Notices and they are cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I told the parties the outcome of my decision during the hearing. The Tenant sought clarification about whether Z.C. is a representative of the Landlord and how the Tenant can pay rent to the Landlord. There was a discussion about this, and the following was agreed upon:

1. Z.C. is an authorized representative of the Landlord and has authority to act as agent for the Landlord and accept rent for the Landlord.
2. The Tenant can pay rent to the Landlord by e-transfer to the email address noted on the front page of this decision. The e-transfer must be sent by the first day of each month.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Application is granted. The 10 Day Notices are cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is entitled to \$100.00 as reimbursement for the filing fee. The Tenant can deduct \$100.00 from their next rent payment.

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

Dated: April 27, 2022

Residential Tenancy Branch