



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, RP, ERPR, MNRT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for repairs, including emergency repairs - Section 32 and 33;
4. A Monetary Order for costs of emergency repairs - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm their exchange of evidence packages and that no recording devices are being used by the Parties for the hearing.

Preliminary Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the primary claim is in relation to whether or not the tenancy ends and as the other claims of the Tenant are not clearly related to this claim I dismiss the claims for compliance, repairs and compensation with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on August 1, 2019 for rent of \$750.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$375.00. On March 10, 2022 the Landlord gave the Tenant a 10-day notice to end tenancy for unpaid rent dated March 20, 2022 (the "Notice"). The Notice sets out unpaid rent of \$923.25 due March 1, 2022. The Tenant was given a notice of rent increase with the rent increased to \$761.25 as of January 1, 2022.

The Landlord states that the unpaid rent amount set out on the Notice includes one or two late fees from 2021, unpaid rent of \$750.00 for February 2021 and unpaid rent of \$74.00 for July 2021. The Landlord states that they did not pursue the unpaid rents for 2021 as they were in discussions with the Tenant about reimbursing the Tenant for items or repairs. The Landlord states that the Tenant then failed to pay rent for March 2022 in the amount of \$149.75. The Landlord confirms that their rental ledger is confusing, and it is noted that the Landlord made the rental calculation for unpaid March 2022 rent while at the hearing. The Tenant states that rents were paid for February 2021 and that the Tenant has the cancelled cheque for this payment. The Tenant states that they are confused by the Landlord's rental evidence.

Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. The Landlord's evidence was confusing. Nonetheless I am able to set out what could be understood: that the Landlord did not pursue any unpaid rents for 2021 because they

were negotiating the Tenant's claims for reimbursement for repairs. As the Landlord did nothing to raise any issue with unpaid rents for 2021 and continued to collect rents until March 2022, I find that the Landlord relinquished their rights to end the tenancy for unpaid rents in 2021. Given the Landlord's evidence that the only unpaid rents as of March 2022 was \$149.75 and as the Notice sets out a significantly greater amount of unpaid rent and includes late fees that are not rents that are payable, I find that the Notice is not valid for the amount of unpaid rent set out. The Notice is therefore cancelled, and the tenancy continues.

As the Tenant's claim has been successful, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rents payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 04, 2022

Residential Tenancy Branch