



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT

Introduction

On April 1, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

On April 12, 2022, this Application was set down for a Dispute Resolution Proceeding on July 21, 2022 at 11:00 AM.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 29-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

The Tenant advised that he served the Landlord with his Notice of Hearing package by registered mail on April 12, 2022 (the registered mail tracking number is noted on the first page of the Decision). He testified that he served this to the Landlord’s address noted on the Notice, and that this package was returned to sender. Based on this solemnly affirmed testimony, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing package five days after it was mailed.

At the outset of the hearing, the Tenant was advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on February 15, 2016, that the rent was currently established at an amount of \$1,200.00 per month, and that it was due on the first of each month. A security deposit of \$600.00 was also paid. He stated that the Landlord prevented him from accessing the tenancy agreement from the Landlord's online system, so a copy of it could not be submitted as documentary evidence.

While he did not submit a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities for consideration, he stated that this was served to him in person on March

31, 2022. During the hearing, he read from this Notice that was in front of him and he confirmed the details of it.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice. Therefore, the Notice of March 31, 2022 is cancelled and of no force or effect.

Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of March 31, 2022 to be cancelled and of no force or effect. This tenancy continued until ended in a manner 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: July 21, 2022

Residential Tenancy Branch