



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR RP OLC RR FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 16, 2022 ("10 Day Notice"), pursuant to section 46;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65; and
- authorization to recover the filing fee of the Application from the Landlord.

The Landlord did not attend this hearing scheduled for 9:30 am. I left the tele-conference hearing connection open for the entire hearing, which ended at 9:54 am, in order to enable the Landlord to call into this teleconference hearing. The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

The Tenant stated he served the NDRP and some of his evidence (collectively the "NDRP Package") on the Landlord by registered mail on April 13, 2022. The Tenant submitted the Canada Post tracking number to corroborate service of the NDRP Package on the Landlord by registered mail. Based on the undisputed testimony of the

Tenant, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated he served additional evidence on the Landlord by registered mail on July 29, 2022. The Tenant submitted the Canada Post tracking number to corroborate service of his additional evidence on the Landlord by registered mail. Based on the undisputed testimony of the Tenant, I find the Tenant's additional evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

The Tenant stated he did not receive any evidence from the Landlord for this proceeding.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Application contained a claim for (i) an order requiring the Landlord to complete repairs to the rental unit; (ii) an order for the Landlord to comply with the Act, Regulations; and (iii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord (collectively the "Other Claims").

2.3 Related issues

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the Application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Application was whether the tenancy would continue or end based on whether the 10 Day Notice was cancelled and whether to grant the Tenant recovery of the filing fee of the Application. Accordingly, I find the Other Claims are not sufficiently related to the primary issue of whether the 10 Day Notice is upheld or set aside. Based on the above, I sever the Other Claims and will dismiss them with or without leave to reapply, depending upon whether the 10 Day Notice is cancelled.

Preliminary Matter – Effect of Non-Attendance by Landlord

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Landlord did not attend the hearing before the hearing ended at 9:54 am, being more than 10 minutes after of its commencement, I find the 10 Day Notice to be cancelled. The Tenancy continues until ended in accordance with the provisions of the Act.

Preliminary Matter – Recovery of Filing Fee of Application

During the hearing, the Tenant stated the Landlord served the 10 Day Notice on his door on April 16, 2022. The Tenant testified he paid the rental arrears of \$1,400.00 stated in the 10 Day Notice on April 18, 2022. Sections 46(1) and 46(4) of the Act state:

- 46(1) 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.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The Tenant stated the Landlord served the 10 Day Notice on his door on April 16, 2022. Pursuant to section 46(2) of the Act, the Tenant had 5 days, or by April 21, 2022, within which to pay the rental arrears or, alternatively, make an application for dispute resolution to dispute the 10 Day Notice. The Tenant stated he paid the rental arrears disclosed on the 10 Day Notice in the amount of \$1,400.00 on April 15, 2022. As such, I find pursuant to section 46(4)(a) of the Act that the 10 Day Notice had no effect. As such, the Tenant's claim to dispute the 10 Day Notice was unnecessary. As such, I decline to order the Landlord to pay the filing fee of the Application

Conclusion

The 10 Day Notice is cancelled. The tenancy continues until ended in accordance with the provisions of the Act.

The Other Claims are dismissed with 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: August 18, 2022

Residential Tenancy Branch