



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The hearing was conducted by conference call. All named parties attend this hearing. No issues were raised with respect to the service of the tenant's application. The landlord sent an evidence package to the tenant by registered mail on November 5, 2022 which the tenant stated he had not yet received.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on May 13, 2021 with a monthly rent of \$895.00 payable on the 1st day of each month. The tenant paid a security deposit of \$447.50 at the start of the tenancy.

The 10 Day Notice subject to this dispute is dated August 10, 2022 and was received by the tenant on this same date. The tenant's application to cancel the 10 Day Notice was filed on August 15, 2022 within the time period permitted under the Act.

In the hearing, the landlord confirmed the tenant paid the outstanding rent within five days of receipt of the 10 Day Notice. The landlord advised he was no longer seeking an order of possession and was happy to continue the tenancy.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice.

The tenant paid the outstanding rent amount as per the 10 Day Notice within five days as required pursuant to section 46 of the Act. Accordingly, the 10 Day Notice dated August 10, 2022, is hereby cancelled and of no force or effect.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice dated August 10, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended 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: November 15, 2022

Residential Tenancy Branch