



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord attended with an interpreter, CC. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

At the beginning of the hearing, the landlord's legal name was confirmed. As neither party was opposed, the tenant's application was amended to reflect the landlord's proper name.

The landlord confirmed receipt of the tenant's application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy dated July 4, 2022, which was posted on the tenant's door on July 4, 2022. In accordance with sections 88

and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on July 7, 2022, 3 days after posting.

Issues

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

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on November 1, 2021. Monthly rent is currently set at \$1,380.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$690.00 each deposit.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Utilities on July 4, 2022. The landlord alleges that the tenant failed to pay their portion of utilities in the amount of \$385.31. The tenant disputed the 10 Day Notice on July 5, 2022.

Analysis

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

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, and

(e) when given by a landlord, be in the approved form...

Both parties submitted a copy of the 10 Day Notice in evidence. I note that the landlord failed to state the effective date of the notice, and left that section blank. As noted above, section 52(c) of the *Act* requires that the landlord state the effective date of the notice. I find that the 10 Day Notice does not comply with section 52 of the *Act*, and therefore is not valid. Under these circumstances, I am allowing the tenant's application to cancel the 10 Day Notice dated July 4, 2022. The tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful with their application, I allow the tenant to recover the \$100.00 filing fee.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice. The 10 Day Notice to End the Tenancy dated July 4, 2022 is hereby cancelled and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I find that the tenant is entitled to recover the filing fee for this application. I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: November 22, 2022

Residential Tenancy Branch