



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, 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 (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. The landlord acknowledged he received the tenant's documentary evidence, the landlord did not submit any documentary evidence for this hearing. Both parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any

adjournment or accommodation requests. 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.

Issue(s) to be Decided

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

Should an order be given to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenant installed an air conditioner without his authorization which is a breach of their tenancy agreement. The landlord testified that they had agreed to \$50.00 dollars per month for the increased electricity usage. The landlord testified that he seeks \$250.00 total for the period of June 2022 to the end of October 2022. The landlord testified that the tenant continually has her boyfriend staying over night. The landlord testified that their tenancy agreement states that the landlord will be entitled to an additional \$500.00 per month for any month where the tenant has a guest sleep over more than five nights. The landlord issued a 10 Notice to End Tenancy for Unpaid Rent or Utilities on July 22, 2022. The landlord wants the tenancy to end and be awarded \$750.00 for the costs outlined.

The tenant gave the following testimony. The tenant testified that her ex-boyfriend didn't stay the whole night as claimed by the landlord as he worked graveyard shifts. The tenant testified that she didn't buy the air conditioner until August and disputes the landlords claim in its entirety. The tenant testified that no set amount was ever agreed to and that her rent is always paid in full and on time.

Analysis

When a landlord issues a notice to end tenancy, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. The landlord did not submit any documentation to support his claim. Regarding the landlords claim for unpaid utilities, section 46 of the Act addresses it as follows :

Landlord's notice: non-payment of rent

46 (6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a **written demand for payment of them**,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The landlord confirmed that he has not given a written demand for payment of the utilities. In addition, the landlord did not provide documentation to show that there was an agreed upon amount for extra utilities, accordingly; I dismiss this portion of the landlords claim.

Regarding the guest fee of \$500.00, the landlord failed to provide sufficient evidence such as dates, video, witness testimony or any other evidence that would support his claim, accordingly; I dismiss this portion of the landlord's application.

The landlord has failed to provide sufficient evidence to support the issuance of the notice. I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 22, 2022, it is of no effect or force.

Although the tenant was given a full opportunity to present her application, she was silent on the issue of being given an order for the landlord to comply with the Act, regulation or tenancy agreement, accordingly; I dismiss that portion of the application.

The tenant is entitled to a one time rent reduction of \$100.00 from the next rent that is due in full satisfaction and recovery of the filing fee for this application.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled; it is of no effect or force. The tenancy continues.

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: December 13, 2022

Residential Tenancy Branch