



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR DRI RPP MNDCT RP OLC FFT**

Introduction

This hearing was convened as a result of two applications for dispute resolution (collectively the “Applications”) made by the Tenant under the *Residential Tenancy Act* (the “Act”).

In the first application for dispute resolution (“First Application”), the Tenant seeks:

- a monetary order for compensation from the Landlord pursuant to section 67;
- an order regarding a disputed rent increase pursuant to section 43;
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to return the Tenant’s personal property pursuant to section 66;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the First Application from the Landlord pursuant to section 72.

In the second application for dispute resolution (“Second Application”), the Tenant seeks:

- an order for cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated September 28, 2022 (“10 Day Notice”) pursuant to section 46; and
- authorization to recover the filing fee for the Second Application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:26 am, in order to enable the Landlord to call into this teleconference hearing. The Tenant attended the hearing and he 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 were provided in the Notice of Dispute Resolution Proceeding for the First Application ("First NDRP") and the Notice of Dispute Resolution Proceeding for the Second Application ("Second NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Tenant stated he served the First NDRP and the Tenant's evidence ("collectively the First NDRP Package") on the Landlord by registered mail on September 23, 2022. The Tenant provided the Canada Post tracking number for service of the First NDRP on the Landlord by registered mail. Based on the undisputed testimony of the Tenant, I find the Landlord was served with the First NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated he served the Second NDRP and the Tenant's evidence ("collectively the First NDRP Package") on the Landlord by registered mail on October 22, 2022. The Tenant provided the Canada Post tracking number for service of the Second NDRP on the Landlord by registered mail. Based on the undisputed testimony of the Tenant, I find the Landlord was served with the Second NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Effect of Non-Attendance of Landlord

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For

example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Even though the Tenant made the Application to seek cancelation of the 1 Month Notice, the Landlord must nevertheless meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP 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 it ended at 11:26 am, being more than 10 minutes after its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 10 Day Notice is valid. As such, I order the 10 Day Notice to be cancelled. The tenancy will continue until it is legally ended in accordance with the Act.

As the 10 Day Notice has been cancelled, the Tenant has been successful in the Second Application. As such, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Preliminary Matter – Withdrawal of First Application

I noted the claim for compensation in the First Application was for \$100.00. The Tenant stated he intended to claim \$100.00 per month for a total of 17 months for a total of \$1,700.00 for overpayments of rent he has paid to the Landlord based on a notice to increase rent the Landlord gave him that did not comply with the provisions of the Act or Residential Tenancy Regulations. I told the Tenant that I could not amend his claim from \$100.00 to \$1,700.00 because that Landlord was not been provided notice of the total amount of the monetary claim in the First NDRP. The Tenant then requested that the First Application be withdrawn so that he could make a new application. As such, I dismiss all the claims made by the Tenant in the First Application, except for the claim for reimbursement of the filing fee from the Landlord, with leave to reapply. I dismiss the Tenant's claim in the First Application for recovery of the filing fee without leave to reapply.

Conclusion

The 1 Month Notice to be cancelled. The tenancy will continue until it is legally ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Second Application.

All of the claims made in the First Application, except for the claim for reimbursement of the filing fee, are dismissed with leave to reapply. The claim for the filing fee for the First Application is dismissed without 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: January 27, 2023

Residential Tenancy Branch