



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and/or utilities pursuant to section 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- 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 the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue #1 – 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 for unpaid rent, 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.

Preliminary Issue #2 – Form and Content of Notice to End Tenancy

The central issue of this dispute was a 10 Day Notice. However, there was a discrepancy with the 10 Day Notices submitted on file by the parties on file. The tenant submitted a 10 Day Notice dated August 3, 2022. A second page of this Notice was not submitted but the tenant testified that it indicated \$6000.00 outstanding on August 1, 2022. This notice was signed and dated by the landlord. The tenant testified that she received this Notice on August 3, 2022 and applied to dispute it on August 6, 2022.

The landlord submitted a 10 Day Notice dated August 5, 2022. This Notice indicates an outstanding rent of \$3000.00 due August 5, 2022. This Notice was not signed by the landlord. The landlord testified that she does not have any recollection of the August 3, 2022 notice and that her normal practice is to serve a 10 Day Notice five days after rent was payable. The landlord testified that she does not have a copy of the August 3, 2022 on file even though this notice was signed by the landlord.

The tenant acknowledged receipt of the 10 Day Notice dated August 5, 2022 on this same date, but submits that this Notice was unsigned.

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice 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.

I find that the landlord did not give the tenant a Notice to End Tenancy in the approved form as per the requirements of Section 52 of the Act. The 10 Day Notice dated August 5, 2022 is hereby cancelled and of no force or effect. As the landlord's own testimony was that she had no recollection of the 10 Day Notice dated August 3, 2022, that notice is also hereby cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. This amount may be withheld from a future rent payment.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice dated August 3, 2022, which is hereby cancelled and of no force or effect. The landlord's unsigned 10 Day Notice dated August 5, 2022 is also hereby cancelled and of no force or effect.

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 05, 2023

Residential Tenancy Branch