



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, 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;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This matter was scheduled for a conference call at 11:00 a.m. on this date. Both parties participated in the teleconference.

The following RTB *Rules* are applicable and state (my emphasis added):

2.3 Related issues

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the tenant's main urgent application. The tenants primary reason to file this application was to dispute a notice to end tenancy.

I informed the tenant that he was provided with a priority hearing date, due to the urgent nature of his application. I informed him that this was the central and most important, urgent issue to be dealt with at this hearing.

I notified the tenant that his monetary claim was dismissed with leave to reapply. I also dismiss the tenants request for an order to have the landlord comply with the Act, regulation or tenancy agreement with leave to reapply as it is connected with his monetary claim. I informed him that he received a priority hearing date for the end of tenancy issue, as his monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenant confirmed his understanding of same.

I notified the tenant that he could file a new application and pay a new filing fee if he wants to pursue his monetary claim in the future. He confirmed his understanding of same.

Issues to Decide

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

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

JL gave the following testimony. JL testified that the tenancy began on September 24, 2021 with the monthly rent at the time the notice to end tenancy was issued was

\$1750.00 due on the first day of the month. JL testified that the tenant had not notified her that he had paid the rent as was their usual practice. JL testified that on August 4, 2022 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued for unpaid rent. JL testified that the tenant later provided notification that the rent was paid by e-transfer on August 1, 2022.

CK testified that its not his job to tell the landlord if the rent has been paid. CK testified that he always paid the rent by e-transfer and that the landlord should be aware of such payments.

Analysis

Section 46 of the Act addresses the issue before me as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Counsel for the landlord acknowledged that payment was made on time. The tenant also provided proof of payment made on August 1, 2022; accordingly, I hereby cancel the notice, it is of no effect or force.

The tenant is entitled to a one time rent reduction of \$100.00 for the rent due March 2023 for the full recovery of the filing fee for this application.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2022 is cancelled. 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: February 02, 2023

Residential Tenancy Branch