



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order for the Landlord’s compliance - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence.

Preliminary Matter

The Tenants claim for an order of compliance is in relation to a breaker and wireless issues.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the compliance claim is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Relevant Background and Evidence

The following are agreed or undisputed facts: the tenancy started on May 20, 2021 with monthly rent of \$1,200.00. On December 19, 2022 the Landlord gave the Tenant a 10 day notice to end tenancy for unpaid rent dated December 19, 2022 (the "Notice"). The Notice sets out unpaid rent of \$3,060.00 with out noting when this rent was due.

The Tenant states that rent is payable on the first day of each month. The Landlord states that rent is payable on the 25th day of each month. The Tenant states that at the outset of the tenancy the Landlord collected \$700.00 as a security deposit and \$375.00 as a pet deposit. The Landlord states that the Tenant only paid the pet deposit.

The Landlord states that the amount of rent on the Notice is for unpaid October, November and December 2022 rent of \$1,200.00 each. The Landlord also states that the Notice includes unpaid rent for September 2022. The Landlord also states that the Tenant did pay some rent for November 2022. The Landlord states that the Notice does not set out the correct amount of unpaid rent because the Landlord was stressed at the time the Notice was issued.

The Tenant states that rent for October 2022 was paid in full and that the receipt for this amount is provided as evidence. The Landlord states that although the Landlord's signature on this receipt appears to be that of the Landlord, the document is forged. The Tenant states that \$540.00 was paid for November 2022 rent. The Tenant states that on December 19 and 20, 2022 the Tenant attempted to pay the rent but that the Landlord refused to accept any rent. The Landlord confirms that this offer to pay the rent was denied as the Tenant was only going to pay partial rent. The Tenant states that they had and continue to have the full rent to pay. The Tenant states that the Landlord has refused to accept rent for January and February 2023 as well. The Landlord states that no rents were offered for these months.

Analysis

Section 46(1) of the Act provides that 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. Section 46(4)(a) of the Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. The Landlord's evidence of what rents were not paid was inconsistent and the Landlord's evidence is that the amount of unpaid rent set out on the Notice is not correct. Further the Landlord's evidence is that the Landlord refused to collect rent as offered on December 19, 2022, thereby denying the Tenant the right to pay the rent within 5 days receipt of the Notice. For these reasons I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled, and 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 Act.

Dated: February 27, 2023

Residential Tenancy Branch