



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

On November 4, 2022, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Utilities (the “Notice”) dated October 31, 2022, and for an order that the Landlord comply with the *Act*. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated October 31, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order?
- Should the Landlord be ordered to comply with the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

This hearing was scheduled for a teleconference hearing on this date.

This hearing was scheduled to commence at 11:00 a.m. on March 16, 2023. I called into the teleconference at 11:00 a.m.; the line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Landlord.

The Landlord submitted that the Tenant was still residing in the rental unit, and they were requesting an order of possession of the rental unit.

The Landlord testified that this tenancy began on July 1, 2020, that rent in the amount of \$1,115.00 is to be paid by the first day of each month and that the Tenant paid the Landlord a \$550.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that in September 2022, it was discovered that the Tenant had not put the electrical bill for the rental unit in their name as required under their tenancy agreement, and that the Landlord had been unknowingly paying this bill for the last two years in error. The Landlord testified that they sent a letter to the Tenant on September 21, 2022, advising the Tenant of the error and telling them that they needed to put the electrical bill in their own name as per the tenancy agreement. The Landlord submitted a copy of the September 21, 2022, letter into documentary evidence.

The Landlord testified that the September 21, 2022, letter also informed the Tenant that they would have to pay back the Landlord for the electrical bill charges between April

2020 to September 2022. The Landlord confirmed that the Tenant did put the electrical bill their own name as of October 1, 2022.

The Landlord testified that they sent a demand for payment, with a payment plan, to the Tenant on September 30, 2022, to recover the utility bills paid by the Landlord, but that the Tenant refused to pay the demand letter.

The Landlord testified that they served the 10-Day Notice to the Tenant on October 31, 2022, by registered mail. The 10-Day Notice recorded an effective date of November 14, 2022, and an outstanding utility bill amount of \$6,549.73.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant has applied to dispute a Notice and that matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

7.1 The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Therefore, as the Tenant did not attend the hearing by 11:11 a.m., I dismiss the Tenant's application without leave to reapply.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.

I find that the Tenant was deemed to have received the Notice on November 5, 2022. Accordingly, I find that the Tenant had until November 10, 2022, to either paid the outstanding utility or disputed the Notice. In this case, I find that the Tenant applied to dispute the Notice within the legislated timeline.

Section 55(b) of the Act states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has failed in their application to dispute the Notice.

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Although the Tenant has failed to attend these proceedings and their application has been dismissed, I find pursuant to section Rule 7.18 of the Residential Tenancy Branch Rules of Procedure the puts the onus on the Landlord to prove the claims that they are making in their Notice to end tenancy, I must still consider the evidence before issuing an order of possession. In this case the Landlord is requesting the recovery of their electrical bill payments for this rental unit between July 2022 and September 2022, in the amount of \$6,549.73.

I have reviewed the tenancy agreement submitted into evidence by the Landlord and noted that the electrical for this rental unit was not included in the rent for this tenancy. I also accept that the Tenant has started paying the electrical bills for this rental unit as of October 1, 2022, after receiving notification. However, I find that I must consider the legal principle of estoppel in regard to the Landlord's Notice.

Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, I find that the Landlord established a pattern of not requiring the Tenant to pay the electrical bills for this tenancy. I also find that the Tenant relied on this pattern, never paying an electrical bill for the first 27 months of this tenancy.

I accept the Landlord's testimony, supported by their documentary evidence that the Landlord has given notice to the Tenant that they are changing their conduct and are now going to strictly enforce the requirement under the tenancy agreement for the Tenant to pay the electrical bills for this rental unit.

However, I find that the Landlord is not entitled to the retroactive recovery of their payment of electrical bills for this rental unit between July 2020 and September 2022, due to their establishment of a pattern of failing to enforce this right.

Consequently, as I have determined that the Landlord is not entitled to the amount claimed in unpaid utilities between July 2020 and September 2022 as indicated on their Notice, I must find that the Notice they issued is of no force or effect under the *Act*.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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I decline to award the Landlord an order of possession and a monetary order, as I find that their Notice is of no force or effect under the *Act*.

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: March 20, 2023

Residential Tenancy Branch