



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with an application by MT (the “tenant”) pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46;
2. an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
3. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant appeared at the hearing. KM appeared as the tenant’s advocate.

The tenant provided affirmed testimony that they served the landlord with the Notice of Dispute Resolution Proceeding and evidence package on March 20, 2023, by sending a copy by registered mail. In support of this, the tenant provided a receipt dated March 20, 2023, containing a Canada Post Tracking Number.

Based on the affirmed testimony and evidence of the tenant and based on sections 89 and 90 of the Act, I find that the required documents were served on the landlord on March 20, 2023, and are deemed to have been received by the landlord on March 25, 2023, the fifth day after they were sent by registered mail.

The tenant was given full opportunity under oath to be heard, to present evidence and to make submissions. MT confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11

The landlord did not appear at the hearing. The hearing proceeded in the landlord's absence pursuant to Rule of Procedure 7.3.

Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled?
- If not, is the landlord entitled to an Order of Possession and unpaid rent?
- Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that they have lived in the rental unit for 16 years. Monthly rent is \$1,001.00. The tenant believed they paid a security deposit but they do not recall the amount.

The tenant testified that they do not recall when they received the 10-Day Notice, but they believe it was on or about February 24, 2023. The 10-Day Notice indicates it was issued because the tenant failed to pay rent in the amounts of \$919.00, \$18.00, and \$50.00. The tenant testified that while they paid rent late in February, they have paid February's rent and they do not believe there is any rent outstanding. The tenant is seeking an order for cancellation of the 10-Day Notice.

The tenant went on to testify that they are seeking an order that the landlord provide them with a key to the door of their unit and a key to their mailbox. The tenant testified that they paid the landlord \$30.00 for a mailbox key but have yet to receive it.

Furthermore, the tenant testified that while the landlord replaced the front door of the unit after it was damaged by the fire department, the landlord has not provided them with a key for the new door. The tenant testified that she has recently arrived home to find items from her fridge missing. The tenant is seeking an order requiring the landlord to provide them with a key to their rental unit and mailbox.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. In most circumstances the onus is on 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.

Based on the above, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the 10-Day Notice.

However, the landlord did not appear at the hearing to make submissions or present evidence. On that basis, I find the landlord has not met the burden upon them to prove the reason that the tenancy should be ended. Therefore, I find in favour of the tenant and order that the 10-Day Notice is cancelled.

I accept the tenant's undisputed affirmed testimony that they are not in possession of a key to their mailbox or front door of their rental unit.

Importantly, section 31 of the Act prohibits a landlord from changing locks or other means of access to a rental unit, unless the landlord provides the tenant with new keys or other means of access to the rental unit. Further Tenancy Policy Guideline #1 at page 1-6 states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms

Finally, section 62(3) authorizes the Director to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Based on the foregoing, I order that the landlord must provide the tenant with a key to their mailbox and front door, no later than April 15, 2023.

As the tenant was successful in their applications, I find that they are entitled recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the tenant may withhold \$100 from ONE future payment of rent.

Conclusion

For the reasons outlined above, I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue.

The landlord must provide the tenant with a key to the mailbox and front door of the rental unit no later than April 15, 2023.

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 31, 2023

Residential Tenancy Branch